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LETTERS AND ESSAYS ON CURRENT IMPERIAL AND INTERNATIONAL PROBLEMS

1935–6

By

A. BERRIEDALE KEITH
D.C.L., D.Litt., LL.D., F.B.A.
Of the Inner Temple, Barrister-at-law, and Advocate of the Scottish Bar, Regius Professor of Sanskrit and Comparative Philology and Lecturer on the Constitution of the British Empire at the University of Edinburgh; formerly Assistant Secretary to the Imperial Conference

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IN MEMORIAM

MARGARET BALFOUR KEITH

PREFACE

SINCE the publication of my *Letters on Imperial Relations, Indian Reform, Constitutional and International Law, 1916–1935*, much of great interest has taken place in matters affecting the Empire. The inability of the British Government to give full effect to the Covenant of the League of Nations in its application to the aggression of Italy against Ethiopia has naturally struck a severe blow at the validity of International Law, and has rendered inevitable a reopening of the question of the future of the territories, formerly German, transferred to the Crown under mandate. Moreover, the question of co-operation in Imperial Defence has once more become a live issue, raising in a more concrete form the problem of the possibility of reconciling with co-operation the rights of neutrality and secession claimed by the Irish Free State and the Union of South Africa. Another fundamental issue has been raised by the announcement of the intention of the Irish Free State to revise the constitution, eliminating the Governor-General. Power to do so is held to have been accorded by the Statute of Westminster in accordance with the ruling of the Privy Council in 1935 which established the wide effect of that charter of Dominion liberties.

Important changes in the native franchise in the Union of South Africa have accentuated the difficulty of the transfer to that Dominion of control of the native territories which are still under the direct rule of the Crown. The terms of the mandate for Palestine have once more come under controversy in consequence of the increased rate of Jewish immigration, partly as the result of the unfavourable conditions of Jewish life in

Germany under the Nazi régime. On the other hand, relations with Egypt have improved as the result of the menace to Egyptian security implicit in the Italian ambition for the revival of the Empire of Rome in the Mediterranean. Some doubt, however, has been raised in the West African protectorates regarding the security of their attachment to the Crown, as a result of the suggested transfer of protected areas to Ethiopia in order to facilitate a settlement with Italy, and the question of the advantages of annexation has been discussed.

My sincere thanks are due to the Editors of *The Scotsman*, *The Manchester Guardian*, *The Spectator*, *The Sunday Times*, *Outlook*, *The West African Review*, and *The Near East and India* for their concurrence in reprinting my contributions.

A. BERRIEDALE KEITH.

THE UNIVERSITY OF EDINBURGH,
28 September 1936.

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I

IMPERIAL RELATIONS

(*a*) QUESTIONS OF CONSTITUTIONAL LAW

I. THE SIGNIFICANCE OF DOMINION STATUS

EXTENSIONS IN ITS INTERPRETATION

MANCHESTER GUARDIAN, *1 February 1935*.

Though it is only within the last fifteen years that the term 'Dominion status' has become familiar in political terminology, the creation of the status must be traced to the Colonial Conference of 1907, and to the decision then arrived at to place on a permanent basis the system of periodic conferences between the constituent parts of the Empire. The Conference agreed to institute an Imperial Conference to meet every four years, of which the Prime Ministers of the United Kingdom and of the self-governing colonies would be members, meeting on a footing of equality; the Secretary of State for the Colonies was also to be a member, and would act as president in place of the Prime Minister of the United Kingdom in the latter's absence. As a sign of recognition of the special position of the colonies in question the new term 'Dominions' was adopted as their designation. The distinctive character of their status was emphasized by excluding India from membership of the Conference; the Dominions were essentially self-governing territories in all internal matters and thus stood apart from India as well as from the Crown colonies and protectorates.

The first meeting of the Imperial conference in 1911 further defined their position. One the one hand, emphatic rejection was accorded to the suggestion of the New Zealand Prime Minister for Imperial federation in a tentative form; on the other, it was agreed that not only must the Dominions continue to be consulted on all issues of foreign policy which directly affected

their interests, but that in future they should be given the opportunity of associating themselves with the United Kingdom in determining the broad lines of British foreign policy. It was, however, made clear that, in the last resort, in issues of war and peace and alliances the final decision must rest with the British Government, whose fleet, army, and Diplomatic Service afforded the essential basis for effective participation in world politics.

CANADA

The further development of the status thus achieved was greatly accelerated by the share taken by the Dominions in bearing the burden of the Great War and by the demand of the Prime Minister of Canada that the sacrifices of his people should be rewarded by recognition of the birth of a new nation worthy to rank in power and place with all save the great States of Europe and the United States of America. The British Government readily conceded the justice of Sir R. Borden's claim, supported as it was by the other Dominions, save Newfoundland. The objections of foreign Governments were overruled, and the conclusion of the Treaty of Versailles in 1919 saw the grant of a definite international status to the Dominions other than Newfoundland. They became distinct members of the League of Nations side by side with the British Empire, to which was assigned a permanent seat on the League Council, while it was expressly agreed that the Dominions would be eligible for election as temporary members, a contingency realized in 1927, since which date a Dominion has always been represented on the Council. Moreover, Canada insisted successfully that not only should the treaties of peace be signed separately for the King in respect of each

Dominion, but that ratification should await Dominion approval.

This settlement, achieved amid the turmoil of the determination of the terms of peace, necessarily left much that was obscure in the status of the Dominions, but the procedure thenceforth adopted rested on the fundamental principle that the Dominions were entitled in external affairs to that complete autonomy which long before they had achieved in internal questions. This principle of equality could only be made fully effective by drastic revision of the existing legal Constitution of the Empire, which had long ceased to correspond in any measure to constitutional usage.

IRISH FREE STATE

The Imperial Conference of 1921 felt that matters might be left to develop without immediate legal changes, but the position was vitally altered by the conclusion of an agreement for a treaty with Ireland on December 6, 1921. The leaders who claimed to speak for Ireland accepted the status of the Dominion of Canada as that of the Irish State, and in framing the Constitution of the State in 1922 they made it clear that they claimed sovereign independence, modified only by recognition of a Crown common to the State and the other members of the British Commonwealth of Nations. Before the Free State Constitution could be approved by the British Government certain modifications were insisted upon, and it was only accepted by that Government subject to the maintenance of appeal from the Supreme Court of the State to the Privy Council and to the reassertion of the paramount legislative authority of the British Parliament. To secure the removal of these restrictions and to develop

the possibilities of achieving fuller international status inherent in Dominion status became the immediate objective of the Free State Government.

In external affairs the Free State could rely on the position won by Canada. That Dominion was a member of the League, and the Free State promptly secured admission thereto. That Dominion had won in 1920 the right to send a Minister plenipotentiary to Washington, though it had not acted on that right; the Free State established representation. Canada in 1923 had claimed that a treaty affecting her alone need be signed only by a Canadian representative; the Free State asserted the like right. At the Imperial Conferences of 1923–30 the Free State acted with Canada and the Union of South Africa in demanding full control of foreign relations and the right of separate action. This was conceded, subject only to the duty of communication of information to other parts of the Commonwealth. In 1931 the Free State Government eliminated the British Foreign Office from all connexion with its foreign affairs, placing itself in direct communication with the King, and thus made it clear that it claimed sovereign independence under the British Crown.

In internal matters equal success was achieved. The Free State asserted the right to select and dismiss the Governor-General, and in 1931 the Statute of Westminster virtually renounced British legislative supremacy, permitted the abolition of the appeal to the Privy Council from Dominion courts, and gave extra-territorial validity to Dominion laws. In Australia, New Zealand, and Newfoundland the Statute is not yet operative; Newfoundland, indeed, for the time being, under financial distress, has renounced her self-government. But the Statute is effective in Canada, the Free

State, and the Union which in 1934 used her new freedom to enact her sovereign independence. Moreover, the Union Prime Minister has asserted, without contradiction by the British Government, that the Crown must now be regarded as divisible and that the Union may now secede at pleasure from the Commonwealth and remain neutral in British wars. For the Free State the treaty of 1921 appears to negative either secession or neutrality as possible, nor has Canada claimed either right.

INDIA

The Great War, which had so stimulated the growth of Dominion status, evoked in India claims for equality with the Dominions, and her great services were duly rewarded in 1917 by admission to the Imperial Conference and the promise of reforms 'leading to the progressive realization of responsible Government in India as an integral part of the British Empire'. Indian opinion justly interpreted this as a definite pledge of ultimate achievement of a status equal to that of the Dominions, and any doubt which might have existed as to the sense of the declaration of 1917 disappeared when India was accorded a place in the League of Nations together with the Dominions. It was, therefore, only a formal recognition of an inevitable conclusion when, in 1929, with the permission of the British Government, Lord Irwin asserted that Dominion status was the ultimate goal of British policy for India, an assurance reiterated by Lord Willingdon in 1933. Nor did the Secretary of State for India repudiate this reading of the situation when on November 22, 1933, he insisted that Dominion status was not the chief immediate end of the Governmental proposals, nor did it mark the next step in Indian reform.

It is, however, clear that the assurances given by Lords Irwin and Willingdon are to be read as subject to the paramount principle asserted in 1917 that India must remain an integral part of the British Empire, and that Dominion status must not be held to imply the right to secede. Such a right, indeed, would be wholly incompatible with the position of the Indian States, whose accession is essential for the formation of the proposed Federation, for the princes value in the highest degree their direct relations with the Crown. But, apart from this point, it is clear that, if Dominion status were at once to be enjoyed by the Federation, the Princes would be precluded from entering it. Their adherence is now possible because the Crown retains in respect of executive Government and Legislation final control over executive authorities, and can so exercise that control as to avoid action inconsistent with the rights of the States. From the point of view of the Princes it would be essential, before Dominion status was achieved, that their position should be so defined and safeguarded in the constitution that the Federal Courts could afford them that protection which the Crown would no longer be able to assure to them.

2. THE KING'S REIGN

CONSTITUTIONAL CHANGES WITHIN THE EMPIRE

THE SCOTSMAN, *6 May 1935*.

While the King's reign has been justly characterized as marking the full fruition of the doctrine of constitutional monarchy and the reduction to a minimum of personal intervention in the process of government, events in the Empire have added enormously to the importance of the Crown. The British Empire has

come to be regarded as the British Commonwealth of Nations; the unity which rested on the legal sovereignty of the King in Parliament of the United Kingdom has given place to the unity presented by the Crown as the link which connects the great group of autonomous States into which the British Empire now falls. For the vast majority of British subjects the King presents the embodiment of their sense of solidarity, and evokes a personal loyalty which has far greater cohesive force than any legal ties which could be devised between autonomous Republics. As in the case of the institution of responsible government, the free development of the British Constitution has created with minimum effort a structure which promises to afford a durable settlement of a problem *prima facie* almost insoluble.

DOMINIONS AND FOREIGN POLICY

The first Imperial Conference following the King's accession presented in the clearest form the relations of the Dominions—from whose rank India was then excluded—to the United Kingdom. The Dominions had achieved absolute autonomy in internal affairs, and no argument of the necessity of greater unity in the face of foreign menace would induce Canada, Australia, or the Union of South Africa to accept the suggestion by New Zealand of the creation of an Imperial Parliament to deal with foreign affairs and defence. They listened with interest to the exposition of British foreign policy and the dangers of the European situation, but they were content to leave the general conduct of foreign policy in the hands of the British Government, as in the past, reserving to themselves the right to decide in the event of Britain becoming involved in war to what extent they would give aid.

The Great War, however, rendered it clear that it was impossible to avoid participation in hostilities, and determined the Dominions to face the implications as regards foreign relations of the autonomy which they had achieved as regards affairs of domestic interest. They participated, then, as equals in the deliberations of the War Cabinets and War Conferences of 1917–18, and made part of the British Empire Delegation at the Peace Conference; moreover, to demonstrate to the world their distinct personality, they claimed and were granted representation at the Conference on the scale appropriate to the lesser Powers among the Allies. The grant of separate representation on the League of Nations, with the right to election to temporary membership of the League Council, while the British Empire was accorded permanent membership, attested their peculiar position as independent units within a larger whole.

The decisions taken in 1919 definitely decided the future evolution of the Imperial Constitution. In 1920 Sir R. Borden took a vital step in securing British concurrence in the grant to Canada of the right of separate diplomatic representation at Washington, but the deliberate and complete exploitation of the implications of the new status was carried out primarily by the Irish Free State. That Dominion, created by Treaty in 1921, was accorded the status and rights of Canada, and its determination to assert the utmost measure of autonomy was seconded by the Union of South Africa, when in 1924 a Nationalist Government under General Hertzog came into being, holding the tenets of the divisibility of the Crown, and the right of each part of the Commonwealth to remain neutral in a British war, and even to secede from the Commonwealth. Canada in

some measure shared their desire for further definition of status, for in 1923–4 difficulties had arisen with the British Government over the negotiation and ratification of the Treaty of Lausanne, and in 1926 the Governor-General had asserted the right dormant since confederation to refuse a dissolution to his Prime Minister.

PRINCIPLE OF AUTONOMY

The Imperial Conference of 1926, therefore, seeking a formula, defined the position of the United Kingdom and the Dominions as 'autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations'. Lord Balfour, whose ingenuity framed the formula, would have stressed as a qualification that equality of status was consistent with differentiation of function, but this qualification was, as was inevitable, speedily forgotten. It remained, therefore, merely to work out for internal and external affairs alike the implications of the equality so definitely declared. The work was accomplished by a Conference of experts in 1929, and the Imperial Conference of 1930 set its approval on the scheme which they had devised. So far as legislation was requisite, it was approved by the Parliaments of all the Dominions, and enacted by the British Parliament as the Statute of Westminster, 1931, the seal of that liberty which is *articulus stantis aut cadentis Imperii.*

Some doubt, indeed, has been felt in Australia, New Zealand, and Newfoundland whether the principle of autonomy has not been carried too far, and the Statute is not yet in force in these three Dominions, while for

Canada the Statute preserves intact the essential basis of the federal constitution, which can still be altered only at Canadian request by the British Parliament. The full effect of the Statute, therefore, is to be seen in the Irish Free State and the Union of South Africa. In both sole legislative power rests with the Dominion Parliament; the Crown possesses no right to disallow legislation on the advice of the British Government; for neither can Parliament legislate without Dominion assent. Both choose and can remove the Governor-General. Both claim that it is within their power by legislation to declare the termination of their connexion with the British Commonwealth.

SECESSION AND NEUTRALITY

On foreign affairs, which have always been regulated by the Royal prerogative, adjustment required no legislation. It was sufficient to agree at the Imperial Conferences of 1926–30 as to the authority on which the prerogative should be employed, and each part of the Commonwealth now is the final authority for the advice given to the Crown. The Irish Free State and the Union deal direct with the King, and the other Dominions may do so if they please. Similarly they may establish legations of their own in foreign countries, or act through the Foreign Office and British legations. A measure of unity is preserved by the principle that the Governments of the Commonwealth should consult one another in foreign affairs. But each part is autonomous, and the extent of that autonomy seems almost unlimited. The right to remain neutral in a British war is actually claimed by the Free State and the Union, though in both cases obligations to afford facilities to the British Navy in time of war have been

undertaken which would hardly be deemed by any foreign Power compatible with neutrality.

These issues of secession and neutrality show the risks of autonomy, but against them must be set the widespread conviction of Dominion statesmen throughout the Commonwealth that the very completeness of Dominion autonomy affords a solid and enduring ground for the fruitful co-operation of the Dominions with the United Kingdom and its Colonial Empire, and with the Indian Empire, permitting each part to render by development of its own nationality the most efficient service towards the common ideal.

THE COLONIAL EMPIRE

In the Colonial Empire notable advances in constitutional development have been made for Southern Rhodesia and Ceylon. The former territory was granted in 1923 full Colonial status, and endowed with responsible government in domestic affairs, subject to certain safeguards in the interests of the large native population and the British South Africa Company; considerable relaxation in both respects has since taken place, and the Colony was admitted to membership of the Ottawa Conference of 1932. Ceylon received in 1931 a constitution of unique character, executive and legislative power alike being vested in a Council of State, largely elective, acting mainly through committees on the model of the London County Council. As a safeguard very extensive powers of control over the Council and independent action are accorded to the Governor, but in the main policy is controlled by the legislature. In external affairs Southern Rhodesia and Ceylon accept British guidance. While these experiments in extending responsible government have been crowned

with success, the grant of responsible government to Malta in 1921 in matters outside the sphere of Imperial interests in Malta as a naval base has proved premature; party strife has prevented the effective working of the system, and the constitution has been suspended in favour of Crown Colony government, which has concentrated attention on the economic improvement of the condition of the people. But a much more striking proof of the difficulty of the working of responsible government is afforded by Newfoundland, which was forced by financial difficulties in 1933 to surrender temporarily Dominion status in order that, under a Crown Colony régime of government by an expert Commission, British funds might be made available to prevent default in the payment of public debt. Financial conditions similarly in 1928 resulted in the abrogation of the old rights of the people of British Guiana, and the substitution of a more efficient form of administration, while since 1931 the legislature of Cyprus has been suspended as a result of political disturbances due to the movement for union with Greece.

In the main, however, the King's reign has been marked by the gradual extension of election as a means of selecting members of legislatures in the West Indies, and in West and East Africa; and the merits of the British government of Protectorates has been internationally recognized in the virtual adoption of that system for the administration of mandated territories under the League of Nations. Of special importance is the assignment to Australia, New Zealand, and the Union of territories in mandate, and the vast increase of British responsibilities in Africa by the acquisition of Tanganyika, with the possibilities thus presented of the creation of a federation with Kenya and Uganda.

INDIAN REFORM

In India constitutional change has followed fast on the King's coronation in 1912 and his announcement of the establishment of Delhi as the capital. Indian war services won the admission of India to the Imperial Conference, the promise in 1917 of the progressive realization of responsible government as part of the British Empire, and the constitution devised in the main by Mr. Montagu and Lord Chelmsford of 1919. Under it government in the provinces was shared between Ministers responsible to the legislatures, then greatly expanded in size, and Executive Councillors under the final control of the Secretary of State for India in Council. But the central government remained official. Admission to membership of the League of Nations in 1919 marked out Dominion status as the goal of Indian advance, and in 1929 this was formally declared by the Governor-General.

Since then exhaustive discussions in India and London between representatives of India and the United Kingdom have resulted in the passage through Parliament of a constitution based on the grant to India of a federal constitution in which British provinces and Indian States shall participate. The Federal Government will be based on the principle of responsible government save as regards foreign affairs, defence, and ecclesiastical matters; the provincial governments will be generally responsible, but both the Governor-General and the Governors of the provinces will have special responsibilities to prevent grave menace to peace and tranquillity, to safeguard the interests of the services, of minorities, and of the States, and to prevent commercial discrimination. Neither the

importance of the experiment nor its extreme difficulty can be denied.

3. BRITISH COMMONWEALTH RELATIONS

COMMON STATUS FOR ALL HIS MAJESTY'S SUBJECTS

THE SOUTH PACIFIC MAIL, *9 May 1935*.

Forms of polity are essentially bound up with the progress of social and economic relations, and it is therefore inevitable that with the vast changes which have come to pass in these spheres, political arrangements have developed which do not fall naturally into any of the classifications familiar to students of political Institutions. The British Commonwealth of Nations is, in the nature of things, a unique product of exceptional circumstances, and it serves no useful purpose to attempt to find a place for it in the ordinary groupings of constitutions. Moreover, its essential characteristic is that it has developed freely and naturally, and that its theory is merely a formulation of what has already been observed in practice.

The most effective way, perhaps, of looking at the Commonwealth is to regard it as a lesser League of Nations, functioning within the greater League, which owes so much to the steadfast support of the United Kingdom and the British Dominions. Just as within the League of Nations all members are equal in status if not in stature, so in the British Commonwealth the units are equal among themselves, in no respect subordinate to one another in any aspect of their internal or external affairs. Viewed in this light, the British Empire falls into seven great units: the United Kingdom with its dependencies of every type; the five great Dominions—Canada, Australia, New

Zealand, Union of South Africa, and the Irish Free State; and India. India differs from the Dominions because its equality with the other units of the Commonwealth is still in process of evolution. Its membership, however, of the League of Nations is a forerunner of the position of complete equality which it is the purpose of the United Kingdom to bring about. It follows from this equality of status that in their external policy the Dominions can act independently of the United Kingdom. They may accredit Ministers to, and receive them from, foreign powers; Canada, the Union of South Africa, and the Irish Free State have made free use of this power. Australia and New Zealand prefer to act through the British diplomatic service, and the other Dominions are at liberty to make use of that service whenever it is convenient. The King in concluding treaties for the Dominions acts solely on Dominion advice, even in those cases in which the instrumentalities of the British Foreign Office are employed by the Dominion Governments. Similarly treaties are ratified by the King on Dominion advice.

But, side by side with this complete autonomy, there exists a loyal understanding between the units of the Commonwealth, formally asserted by the Imperial Conferences of 1923–30, that no unit shall fail to keep the other units informed of the steps it takes in foreign policy; and, just as the central Governments are in constant and cordial co-operation, so their Ministers at foreign courts work together in all matters of common concern. Moreover, in vital questions, such as the Treaty of Paris of 1928 for the renunciation of war, or the Disarmament Conventions, the units pursue the policy of constant consultation in their joint interests. Their plenitude of autonomy brings with it complete

readiness to mould their will so as best to serve the general interest, both of the Commonwealth and of the larger League of Nations.

It follows from this unity that where issues of war and peace are concerned, the Commonwealth may be expected to act with a common will; even in the Union of South Africa, where on strict legal reasoning it is sometimes held that the right of neutrality exists, there is no expectation or desire that such a right should ever be made use of; it is recognized that the United Kingdom will undertake no war, save where compelled to do so by its obligations as a member of the League.

In internal relations the Dominions were long free from any practical restrictions before the Statute of Westminster, 1931, accorded them formally complete autonomy. No act of the British Parliament can now become operative as law of a Dominion, save at the request and with the assent of the Dominion, which must be recited in the Act itself. Dominion legislation is no longer restricted by the rule that, when repugnant to British legislation, it is void to the extent of the repugnancy. Dominion Parliaments are now free to give to their legislation extraterritorial effect to the same extent as is open to the British Parliament. The laws of the Dominions are not now subject to disallowance by the Crown on the advice of the British Government. They are, therefore, for almost every purpose as completely sovereign as is the United Kingdom itself. The only limitations which still exist have in each case a special ground: the Canadian constitution, by the desire of Canada, is still subject to alteration only by the British Parliament, acting at the request of the Dominion Parliament; the constitution of the Commonwealth can be altered only in the manner provided

for that purpose therein; and the Dominions still recognize the power of disallowance, or a similar right, in respect of any legislation which the British Government may regard as affecting the security of, or as inconsistent with, the terms of Dominion loans which have been admitted to rank as trustee securities in the United Kingdom.

It has also been decided, in the interests of the preservation of uniformity of merchant shipping legislation, that, while each unit retains full autonomy, they will act in their legislation without discriminating between their own registered shipping and that registered in other units of the Commonwealth, and that they will co-operate as far as practicable in preserving a uniform shipping legislation throughout the Commonwealth.

Great as is the autonomy of the units, it must always be remembered that there is an underlying unity, the common Crown, which involves a common status for the subjects of His Majesty in the several units. This common status, which is still correctly called British nationality, is not inconsistent with the possession by each Dominion of the right to establish a Dominion nationality or citizenship, and this has been done by Canada, the Union of South Africa, and the Irish Free State. Complete agreement in definition of nationality is not requisite, but the vast majority of nationals in each Dominion possess also the common status. The Crown thus serves as the essential symbol of the unity of the Commonwealth, and it performs the invaluable function of linking all the inhabitants of the Commonwealth in an effective unity of sentiment and loyalty.

It follows from this underlying unity that the agreements which are made between the units of the

Commonwealth are not treaties of international law—a doctrine which was reaffirmed at the Ottawa Conference of 1932, when it was resolved that the advantages then conceded *inter se* by the units would not pass to foreign powers under most-favoured-nation clauses in treaties. In the same way the obligations of the Covenant of the League of Nations, and of conventions concluded under League auspices, do not apply between the units, unless this is in any case specially agreed to. The essence of their relations *inter se* is thus of a constitutional and not of an international character, though, as regards foreign powers, each is an international unit.

Is this unity of the Commonwealth indissoluble, or may any member of its own initiative, or at its own discretion, dissociate itself from the Commonwealth? The answer is disputed by jurists, but the purpose of the governments of the Commonwealth was fully expressed at the Imperial Conference of 1926 and is enacted as a preamble to the Statute of Westminster, which declares that 'Inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the succession to the throne, or the Royal style and titles, shall hereafter require the assent as well of the parliaments of all the Dominions, as of the parliament of the United Kingdom'. This formal declaration is not an unworthy exposition of that vital sense of unity which finds its most general expression in loyalty to the person of the reigning Sovereign of

the United Kingdom, Ireland, and the British Dominions beyond the seas.

4. THE KING'S DEATH: MONARCHY AND PEOPLE

CHANGES SINCE VICTORIA

MANCHESTER GUARDIAN, *25 January 1936.*

The public emotion at the death of King George has testified afresh to the unparalleled position which he occupied in the minds and hearts of his people. To the younger generation, no doubt, this seems a commonplace, but those whose memories carry them back to the reigns of Queen Victoria and Edward VII can appreciate to the full the extent and significance of the change which has taken place in the relations between the Crown and its subjects. It is a change of the most profound character, and it dates back no more than fifty years. Before the Jubilee celebrations of 1887 it may fairly be said that the relations of the people as a whole to the Crown were correct and respectful, but wholly lacking in cordiality or depth of affection. It was accepted as a matter of political theory that limited monarchy was the most convenient form of government, and admitted that Her Majesty was assiduous in the performance of such of her official duties as could be performed in semi-privacy, but her refusal to take part in public functions rendered her but a name to the public at large.

The Jubilee celebrations added deeply to the respect with which the Queen was regarded by rendering her a symbol of the grandeur of her Empire, and this feeling was heightened by the courage with which in 1897 she faced the fatigues of the celebrations of the sixtieth

anniversary of her accession to the throne. But it was not until the last year of her life that her drives through London, in an effort to show the solidarity of feeling between her and her people in the grave trials of a war which seemed to involve the future of the Empire, evoked in the people of the capital at least that personal admiration and sympathy which displayed itself so unmistakably at her death. Imperial sentiment, it may fairly be said, had served as the means to restore to kingship its value and to re-establish between Sovereign and people the bond which seemed to have been destroyed by the advent to the throne of the Hanoverian dynasty and the grave defects of character of the Queen's predecessors.

EDWARD VII

The personal touch thus created was effectively maintained in the reign of Edward VII. The popular love of pageantry was gratified by a King who was anxious to revive the brilliant spectacle of the opening of Parliament and whose coronation ceremonial emphasized the greatness of his Empire. His deep interest in the national sport of horse-racing appealed to all classes of his subjects. Society welcomed a leader who found keen enjoyment in its diversions; the army and navy were gratified by his real interest; and the whole nation took pride in his activity in foreign affairs and in the prestige which he won abroad.

On the foundations laid by his predecessors King George built with a skill the more remarkable because it seemed to be so spontaneous. The hold of the King on his people was both wider and deeper than that of his father, and it seems safe to assert that through him the monarchy has been established as an indispensable part of the Constitution of the British Commonwealth of

Nations. The sympathy readily extended to him when he was suddenly called upon to assume the throne developed into a feeling of respect, admiration, and affection among the vast majority of his subjects. Under Queen Victoria loyalty to the Crown as an institution unquestionably existed, but the new loyalty is to the royal person rather than to the institution; based on reason, it is accompanied by an emotion which renders it far more real and inspiring. How widespread and genuine the feeling is no one who mingled with the crowds during the celebrations last year could doubt for a moment.

Certain of the causes which have gone to engender this feeling may be touched on. Much unquestionably is due to the recognition by a people of whom the greater number possess the vote of the spirit of absolute fair play which the late King displayed in political life. During Queen Victoria's reign it was suspected—since her death it has been shown in detail—that she departed far in her attitude from the ideal impartiality of the constitutional monarch depicted by the political writers of her reign. It fell to the lot of King Edward to deal with situations produced through the emergence of a democratic Parliament with views far in advance of any of its predecessors. It is clear that he strove hard to accommodate himself to the novel circumstances, but it is admitted that the prospect of having to take a decision in the issue of the House of Lords weighed heavily upon him. It fell to his son on his accession to dispose of the most difficult question which had arisen since 1832. Arguments of the greatest weight were adduced to establish the proposition that to promise to swamp the Upper House was to abdicate an essential royal function and to violate the Constitution in the interests of those who desired to destroy the unity of the United Kingdom. Few now

would deny the high degree of insight which induced the Sovereign, when efforts to bridge the gulf failed, to promise if necessary to create sufficient peers to secure the passing of the Parliament Act of 1911, and even at the time it was clear that popular opinion approved his decision.

IRELAND

Popular sympathy in like manner attended his efforts to achieve a compromise on the issue of the Government of Ireland Bill of 1914, and pressure of circumstances was shortly to compel an accord which party feeling had refused to admit. In 1923 the late King's sureness of touch was seen again in the choice of Mr. Baldwin as Premier despite Lord Curzon's strong claims to preferment. But the decisive vindication of his statesmanship was seen in his treatment of the Labour Ministry of 1924 and in his grant of a dissolution without hesitation to Mr. Ramsay MacDonald. Though always a minority Ministry, it received from him such generous co-operation as once and for all to destroy the suggestion that the Crown would not side with the people. In the same spirit he accepted the Labour Ministry of 1929, and, when circumstances in 1931 compelled him to further the creation of a National Government, bitter as was the resentment felt against the Prime Minister, in no responsible Labour quarter was the King's impartiality called in question.

The evolution of the Commonwealth has also added essentially to the position of the Crown. So long as the Imperial Parliament could be regarded as supreme over all the Dominions of the Crown, the tie of allegiance as the source of Imperial unity might be deemed of minor consequence. With the laying down of that supremacy under the Statute of Westminster, 1931, and the sur-

render of control of foreign policy by the British Government since the creation of the League of Nations, with the Dominions and India as full members, the Crown has stood forth as the one essential link of unity. It is in virtue of our personal relationship to the King that we enjoy a common citizenship with the nationals of the other units of the Commonwealth; for subjection to Parliamentary control as a basis of unity is substituted equality in loyalty. To the welcome accorded to the change in the Dominions special strength was given by the fact that, by King George's personal visits and by those of the Prince of Wales and other members of his family, monarchy had ceased to be a distant abstraction to dwellers overseas.

But the close personal bond between King George and his people must be traced to his action in the Great War. Visits to the front, to the camps, to hospitals, attested his whole-hearted devotion to the common cause and his complete identification with the interests of the people, and the Queen and the Royal Family shared to the full his labours. His renunciation of his German titles was accepted by the public in its true light of a formal dissociation from connexion with arbitrary power; the adoption of the style of Windsor attested the depth of the attachment of the royal house to English soil. In those days of common anxieties, of common sorrows and loss, the monarchy established with the people relations of an intimacy, sincerity, and strength which would have seemed impossible to the cool reason of the constitutional historians and lawyers of Queen Victoria's reign.

The coming of peace brought no break in these relations, but transferred their manifestation to the innumerable activities of peace. It is now recognized on all

hands that King George and his family shared the interests of their people in every worthy field of work and recreation alike. Science, art, music, education, hospitals and other forms of charity have shared a wise and discriminating patronage with sports and physical training, nor have the essential needs of trade, industry, and agriculture, or the dangers or hardships of mining, been forgotten. It may be that monarchy has shed something of its divinity, but it has shown instead a deep humanity, which has been rewarded by the sincerity of the regret felt at the news of King George's death.

5. WESTERN AUSTRALIA AND SECESSION

To the Editor of THE SCOTSMAN, *25 May 1935*.

The Report of the Joint Committee of the Houses of Parliament[1] declaring it improper to receive the petition of Western Australia for the power to secede from the Commonwealth is in complete harmony with the principle that constitutional conventions should receive as full recognition as constitutional law in the narrower sense. Responsible government owed its existence to the fact that the House of Commons tacitly renounced the right to question or criticize British Ministers in respect of the action of the Governors of those territories to which that system had been applied. Western Australia in its petition ignored the vital fact that those who have been granted self-government must solve their own problems, unless they are prepared to surrender that status.

The State has unfortunately for years persisted in the unwise tactics of seeking Imperial intervention in the face of the fact that it was advised that such intervention

[1] See Keith, *Letters on Imperial Relations, 1916–1935*, pp. 172–5, 344.

was impossible, and that its true line of action lay in persuading the other States which have suffered from federation to force a reconsideration of the terms of the Constitution, a matter fully within the powers of the Federal Parliament, with the subsequent assent of the people. It may be hoped that the State will now follow the line of action consistent with the Constitution; its Premier has admitted that it was useless to expect the Imperial Parliament to destroy the Federation at the demand of a single State, and the petition may have served a useful purpose if it induces all parties to give dispassionate consideration to a serious situation. The grievances of the State have been exaggerated, but they are real.

It is most interesting to note the view of the Joint Committee that the Federation itself cannot amend the Constitution so as to allow of the secession of a State. Incidentally, this lends weight to the view that federal power of change can only be exercised within the limits of consistency with an indissoluble Federal Constitution, and that the policy of the Labour party to bring about a unitary Constitution is impracticable under the existing power of change.

The episode serves to remind the Indian States that entry upon federation will be irrevocable by their own action, and that federal institutions may prove to work out in a manner very different from that expected or suggested by the Imperial Government. But there is, of course, a vital distinction between the two cases which should not be ignored. Australian federation was the creation of the people of Australia, to which an Imperial Act gave a formal sanction. Indian federation is the work of the British Parliament, which retains, not merely legal, as in the case of Australia, but also

full constitutional right to vary or annul its own work if circumstances prove it faulty in detail or as a whole. This consideration may serve to meet the complaints of those Indians who demand the insertion in the Constitution of constituent power, forgetting that, if this were given, constitutional practice would deduce from it the negation of Imperial alteration of the new and manifestly experimental Constitution.

6. WESTERN AUSTRALIA AND SECESSION

To the Editor of THE MORNING POST, *27 May 1935.*

Nothing, it seems to me, can be more unreasonable than the protests of the Western Australian supporters of secession against the report of the Joint Committee regarding the reception by Parliament of the petition.

The Australian Federation was framed by Australians themselves with the most anxious care. The framers of the Constitution deliberately departed from the Canadian precedent, and assigned to the Federation itself, with the subsequent approval of the people by referendum, the power of amendment of the Constitution. In doing so they intimated in the clearest way that they excluded British action. Further, they expressly decided that the Federal union should be indissoluble, following deliberately the conclusion established in the United States by the Civil War.

Western Australia was not coerced into federation. The British Government of the day observed faithfully the doctrine that it should not, except at the request of the Colonial Parliament, legislate over its head, and did not even contemplate the inclusion of a reluctant colony in the Federation. All that the Colonial Secretary did was to encourage the local Government to submit the

issue to a referendum of the people, and the people by a deliberate and decisive vote, with full knowledge that they were entering an indissoluble federation, determined to adhere to it.

Many of us at the time believed their decision wrong, and events have abundantly confirmed our belief, but the whole responsibility rested on the people of the colony, and it is against themselves or their predecessors that the Western Australians have a grievance.

The attempt to involve the Imperial Parliament in the dispute between the State and the Federation was from the first ill advised and plainly unfair. It is of the essence of self-government that those who enjoy it must accept the fruit of their own actions. As the Premier of the State has himself recognized, action by the Imperial Parliament over the head of the Commonwealth would be a preliminary to the destruction of the Empire. It may be feared that the devotion of so much effort to no purpose has diverted the energies of the State from the one possibility of relief by securing the conversion of their fellow countrymen to a wiser economic policy.

7. BRITISH FORCES IN IRAQ

To Editor of THE SCOTSMAN, *14 May 1935.*

When our fellow countrymen in the period from 1865 were engaged in hostilities with the Maoris in New Zealand, the British Government of the day insisted that it must retain control over the employment of British troops in the suppression of unrest, and that, if the Government of New Zealand were determined to follow its own ideas of native policy, British troops could not be made available to support their policy.

Finally, all British forces were withdrawn, with the fortunate result that the colonists, forced to face the situation with their own resources, moderated their policy and inaugurated a régime which admittedly reflects the greatest credit on the Dominion.

In view of these facts some explanation seems urgently necessary of the position regarding the employment of British forces in Iraq. That territory has been formally recognized as sovereign, and has been admitted to membership of the League of Nations. British forces were not used to prevent grave ill-treatment of the Assyrians in the territory, admittedly in contravention of the duty of the Iraqi Government and its undertaking to the League of Nations. It was understood that the presence of British forces was solely for purposes of Imperial security, and to aid Iraq against external attack. Apparently they are held to be available to repress tribal unrest, while at the same time the Iraqi Government is in no way bound to take action on British advice to remove the just causes of that unrest.

Surely this is a most serious precedent to set in view of the position in India. The final control of policy ascribed to the Governor-General is justified on the score that British forces are essential for the maintenance of security. Accepting this argument as just, how can it be right to expose our Air Force to risk in order to enforce a policy which is not controlled by the British Government, and which *prima facie* seems to be unsound? Nor is the impropriety of the action taken lessened by the fact the Iraqi Government seems far from inclined to sincere friendship with the United Kingdom.

8. DISSOLUTION OF PARLIAMENT: PRIME MINISTER'S POWERS

To the Editor of THE SCOTSMAN, *18 October 1935.*

I note with some surprise the statement in Sir John Simon's letter cited in your issue of to-day that the decision whether there shall be an immediate General Election rests with the Prime Minister. It would seem that Sir J. Simon shares the popular impression that it rests with the Prime Minister to advise on his own responsibility a dissolution of Parliament. Needless to say, this is not the constitutional law. It has been shown conclusively by the late Professor Swift MacNeill, and his evidence has been confirmed from personal knowledge by the late Lord Oxford and Asquith, that the function of advising a dissolution rests with the Cabinet. The rule is well known, and based on British usage, in the Dominions. When Admiral Sir Dudley de Chair was asked in 1927 by Mr. Lang to grant a dissolution, he made it clear to his Premier that he could constitutionally do so only on Cabinet advice, and the Premier therefore took the proper step of securing Cabinet reorganization so as to be able to present a Cabinet recommendation to the representative of the Crown. It is important to stress the rule; it would be highly objectionable to hold that a Prime Minister could ignore his colleagues and dissolve Parliament, and the King is clearly entitled and, indeed, obliged to demand that so serious a step should be carried out on Cabinet advice. The power of the Prime Minister is sufficiently great without adding to it.

As regards the view that legislation to empower the Government to carry out sanctions is unnecessary, since

action can be taken under the Treaty of Peace Act, 1919, it must be pointed out that it is unconstitutional to use powers granted for definite purposes to effect a remote end, simply because it is possible—by no means certain—that the Courts would uphold their exercise.[1] Sir J. Simon must remember very well the failure of the Government of the day in 1919–20 to carry out its policy of protecting the British dye-stuffs industry by exclusion of imports under the general terms of the Customs Acts. It would be deplorable if legal difficulties were to arise in carrying out a clear obligation under the League Covenant, and every consideration of constitutional propriety demands that the obvious step should be taken of obtaining from Parliament a short Act to authorize action by Order in Council.

[1] Cf. ii, nos. 4 and 5, *post*.

(*b*) BRITISH RELATIONS WITH THE IRISH FREE STATE

9. FREE STATE CITIZENSHIP

To the Editor of THE SCOTSMAN, *3 April 1935.*

It is most satisfactory that His Majesty's Government should have at last realized that it has been engaged in a meaningless warfare with Mr. de Valera over the nationality issue, and that in all probability we shall hear nothing more of what Mr. Thomas seemed to wish to convert into a major controversy. Lord Sankey is too prudent to deny the right of the Free State to dissociate within its limits Irish nationality from British nationality; the British Government has not the slightest interest in asserting that in the Free State an Irish national is a British national, and Mr. de Valera admitted from the first that nothing that the State could do could affect the status of Irish nationals in the United Kingdom or elsewhere in the Empire.

There is, of course, one point of substance, but that is not touched upon by Lord Sankey, because the principle was conceded in 1922 by the British Government, for no very satisfactory reasons. The Free State was allowed, without even apparently serious protest, to depart from the then current doctrine that a British subject should be eligible for the franchise in any Dominion on complying with the rules of residence, &c., without any regard to domicile or place of birth. The British Government has continued to permit Irish citizens to acquire the franchise in the United Kingdom on the same terms as before; it may have done so in the hope that the Irish attitude would alter, but it seems clear that there is on this head no chance of reciprocity. As the Union of South Africa has followed the example

of the Free State, it may ultimately become desirable to reconsider the question, though it is not one of any substantial practical importance.[1]

10. APPEALS TO THE PRIVY COUNCIL FROM THE DOMINIONS

To the Editor of THE SCOTSMAN, *7 June 1935.*

It may be worth while calling attention to a few of the consequences of the decisions of the Privy Council in the cases of the Canadian[2] and the Irish Free State appeals,[3] inevitable as these were made by the Statute of Westminster, whose potency has only tardily been recognized in this country.

(1) It is clear now that in the view of the Privy Council there is no obstacle to the carrying out of Mr. de Valera's proposal for the abolition of the office of Governor-General. As I have often pointed out, that office has been so reduced in status that it has ceased to serve any useful function, and involves the Crown in some measure of contempt through the position assigned to its representative. Its abolition, therefore, will be a step in the right direction.

(2) It is also clear that it is open to the Free State to pass legislation which would prevent the continued existence on State territory of the British forces provided for in the Treaty, and render impossible the operation of Article 7 of the Treaty, which Mr. de Valera has reminded us menaces more than anything else the possibility of good relations between the State and Great Britain.

[1] Cf. Keith, *The Governments of the British Empire*, pp. 119–22.
[2] *British Coal Corporation* v. *The King*, [1935] A.C. 500.
[3] *Moore* v. *Att.-Gen. for Irish Free State*, [1935] A.C. 484.

This latter consequence is serious, and it may be regretted that the Privy Council should have thought it necessary to assert that the Statute of Westminster gave the State the power to abrogate the Treaty. For it would have sufficed to hold that the power to abolish the appeal was necessarily conceded when Canada was given authority in this regard, since Canada furnishes under the Treaty the model for Free State rights. Moreover, discussion of the Treaty might well have been avoided, for the appeal is not in the Treaty; it is merely inferred from its existence in Canada, where, however, it is essentially bound up with the federal character of the constitution, and stands on the same footing as the rigidity of the constitution, which has been held not to apply to the Free State.

(3) The treatment of the prerogative by the Privy Council confirms the validity of the epoch-making legislation of the Union in the Status of the Union and the Royal Executive Functions and Seals Acts of 1934, which give legal effect to General Hertzog's doctrines of the divisibility of the Crown, the right of neutrality, and the power of secession by unilateral action.[1]

(4) Of immediate importance is the ruling in its bearing on the proposed transfer to the Union under the South Africa Act, 1909, of the High Commission territories.[2] It is clear that there is now no limit to the legislative power of the Union, and that on transfer it would be able to abrogate without British assent the vital safeguards for the natives contained in the schedule to the Act, and to cut off appeal to the Privy Council. In these circumstances it is patently necessary that transfer should not be effected save with the full assent

[1] See Keith, *Letters on Imperial Relations, 1926–35*, pp. 158–69, 350.
[2] See nos. 24–8, *post*.

of the natives, and that the terms of transfer should be given effect by embodiment in an agreement providing explicitly for decision by an inter-Imperial tribunal of any dispute which may arise as to its execution. We have seen in the case of the Free State the fundamental error in making compacts without including provision for their interpretation by an impartial authority.

II. THE PRIVY COUNCIL AND THE ABROGATION OF TREATIES

To the Editor of THE SCOTSMAN, *13 June 1935.*

May I suggest that in part at least the controversy which has arisen in circles interested in Dominion affairs over the Privy Council judgements of June 6 regarding the appeal is due to a most unlucky adoption by the Committee of a terminology foreign to the standard authorities on constitutional law, whether in England or in the Dominions?

The established rule is that the making and abrogation of treaties is an act of the Crown or the executive government; the function of the legislature is to pass, if necessary or desirable, legislation to give effect to treaties, and to abrogate that legislation when it is thought proper that effect should no longer be given. To talk of Parliament making or abrogating treaties is unknown, and it is, therefore, most surprising to find that the judgement of the Privy Council in the Irish case speaks of the power of the Irish Free State Parliament to pass an Act abrogating the treaty of 1921, and asserts that the Statute of Westminster gave the Irish Free State powers under which they could abrogate the treaty. As the Statute of Westminster deals solely with

legislative power, it neither attempts to confer, nor does it in fact confer, on the Irish Parliament any power to perform the executive function of abrogating a treaty.

All that the Privy Council means, of course, is that the Statute enabled the Free State Parliament to repeal the Imperial legislation of 1922, under which the treaty was made part of the law of the Free State. But it is most unfortunate that by failing to adhere to the established terminology it has put it in the power of Irish Republicans to argue that the highest tribunal in the Empire has declared that the Statute of Westminster has given the right to abrogate the treaty. Precise use of language may be tiresome, but in legal issues of fundamental importance it has advantages.

12. THE PRIVY COUNCIL AND IRELAND

To the Editor of THE SUNDAY TIMES, *13 June 1935.*

I fear that, in simplifying the statement of the legal position of the Irish Free State in its judgement in the appeal in *Moore* v. *Attorney-General*, the Privy Council has made itself responsible for a rather dangerous dictum in saying that the Statute of Westminster gave to the Irish Free State a power under which they could abrogate the Treaty of 1921, and in speaking of the power of the Irish Free State Parliament to pass an Act abrogating the Treaty. This dictum involves a confusion of a dangerous kind between legislative power and executive authority. Under the Irish constitution, as under the British, the power to make and abrogate treaties is invested in the executive government, not in the legislature. The Statute of Westminster is solely concerned with legislative power, and it does not seek

to confer on any Dominion legislature power to make or abrogate treaties. What it did was to remove all restrictions on the legislative power of the Free State Parliament, and to place it in possession as regards the Free State of as plenary authority as is possessed as regards the United Kingdom by the British Parliament. The validity of the treaty remained as complete as before the Statute. It binds both parties as an inter-Imperial compact, and the fact that either Parliament could pass legislation abrogating the Acts of 1922 by which it was made part of the municipal law of both countries has nothing to do with its validity as a treaty.

In fairness to the Irish Free State, it should be noted that the Free State has never accepted the view that the appeal was implicit in the Treaty. The argument to this effect simply rests on the fact that Canadian practice was made the model for Irish. But the Canadian constitution is federal, and it was necessary to recognize from the first that this must result in great differences between the two constitutions. It was admitted by the British Government that the analogy did not require the denial to the Free State of the power to alter the constitution, since that was an incident of the federal compact; it denied that the appeal was also an incident of federation, while the Free State insisted that it was, and therefore should not be inserted in the Free State constitution.

In 1922 the State yielded to pressure to the extent of inserting the appeal in the constitution, but Mr. Cosgrave's Government successfully denied its effect in every case where it was allowed. It must, I think, remain doubtful whether the Irish contention was not right from the first, in which case in altering the con-

stitution the Free State has acted within her clear rights.

Once more the lack of any inter-Imperial tribunal to settle such issues has manifested its grave disadvantages.

13. THE PRIVY COUNCIL AND THE IRISH FREE STATE

THE SPECTATOR, *21 June 1935*.

It is surprising how little appreciation has been shown of the far-reaching character of the decision delivered by the Privy Council a fortnight ago, in *Moore* v. *Attorney-General*, which asserted the validity of the Act of 1933 of the Irish Free State abolishing the right of appeal to the King in Council granted by the Constitution. It is not merely that it returns to the Free State the right denied for over two centuries to have Irish cases decided finally by Irish Courts, but it ascribes to the Irish Parliament a plenitude of sovereign power which the Constituent Assembly by which the Constitution was framed refused to give it. The Assembly, to whose action the Parliament in Irish eyes owes its existence, was familiar with continental, American, and Dominion precedent, and it definitely restricted the legislative power of the Parliament it created, forbidding it to alter the Constitution except in a manner consistent with the treaty of 1921, which it made the supreme law of the land.

The Privy Council held, indeed, that the appeal was implicit in the treaty—a disputable doctrine—and it might have been expected that it would have gone on to hold that the Parliament could not violate the Act of the Constituent Assembly which gave it birth. But it ruled instead that the Statute of Westminster, 1931,

by abrogating the application to the Free State of the Colonial Laws Validity Act, 1865, has conferred on the Irish Parliament the power to disregard every limitation of its authority imposed by the Constitution. On this ground it ruled also that the Irish Act of 1933, removing the oath to the King from the Constitution, was valid, including the fundamental provision of that Act, which deletes from the Constitution the restriction that alterations thereof must be consistent with the treaty.

In English law the result, though *prima facie* strange, is clearly sound. To it the Constituent Assembly presents itself not as the duly authorized representatives of the Irish people from whom all power in Ireland must be derived, but merely as an unauthorized gathering of private persons, whose handiwork, the Constitution, owes all its validity to an Imperial Act, the Irish Free State (Constitution) Act, 1922, which since the Statute of Westminster has no binding force. But the result greatly simplifies the position of Mr. de Valera by rendering it most improbable that the Supreme Court of the Free State will question any law in future on the ground that it violates the Constitution. The Parliament of the Free State is recognized by the Privy Council as absolutely sovereign, and it is not to be supposed that an Irish Court will now derogate from that power, even if prior to the judgement of the Privy Council it might have been inclined to regard the restrictions imposed by the Constituent Assembly as of imperative force. It is now made open to Mr. de Valera to add to the abolition of the oath to the King the abolition of the office of Governor-General, which he has reduced to impotence and a measure of contempt, and to legislate so as to forbid the presence in the Free

State of those British forces for which provision is made by Article 7 of the treaty of 1921. Has he not reminded us, speaking at Blackrock on June 6, that nothing menaces so much the possibility of permanent good relations with Britain as that Article, which gives Britain the right to harbour and other facilities required in time of war or strained relations with a foreign Power?

All this is clear, but the Privy Council has darkened counsel by a strange disregard of established terminology which produces the impression of confusion between two absolutely different things, the existence and validity of a treaty as between the parties, and the legislation necessary for enforcing the treaty in countries such as the United Kingdom and the Free State, where treaties do not *ipso facto* alter the existing law. The Privy Council talks of the Irish Free State passing an Act 'abrogating the treaty', and of the Statute of Westminster giving to 'the Irish Free State a power under which they could abrogate the treaty', and thus opens the way to Mr. de Valera to secure an Act to that effect, relying on the assurance of the Privy Council. But in English and Irish constitutional law alike legislatures neither make nor abrogate treaties, which is purely an executive function, and the Privy Council doubtless meant merely to assert that the Statute of Westminster gave power to the Free State Parliament under which it could annul the effect as municipal law in the Free State of any provision of the Constitution or of the treaty.

But it need hardly be said that to abrogate a treaty and to take away its effect as municipal law are legally totally different things. There have been occasions on which British legislation has failed effectively to protect

treaty rights, but no one pretended that the British Parliament had abrogated or could abrogate the treaty, or that it was any answer in international law to a complaint by the foreign Power to say that the Parliament had failed to pass legislation permitting effect to the treaty or had passed legislation which rendered the giving it effect impossible. As Mr. Cosgrave quite rightly said, when the issue was raised in 1931, the passing of the Statute of Westminster could not alter the obligation of the treaty between the parties. If it is to be abrogated, it must be abrogated by the executive governments by mutual consent, or be denounced on some ground capable of defence in international law, which Mr. de Valera claims to govern relations between the countries, though no such ground is easy to discern. Indeed, from Mr. de Valera's utterances it seems as if he recognized that an accord with the United Kingdom alone would afford him a satisfactory result. But his hands must be strengthened by the knowledge that he can freely legislate to remove the provisions of the treaty from the statute-book, and that the lax terminology of the Privy Council will disseminate the belief that in some way or other the Statute of Westminster gave a right to abrogate the treaty.

The Union of South Africa gains, it is probable, even more than the Free State from the judgement of the Privy Council. The treatment of the prerogative suggests decidedly that we must answer in favour of General Hertzog the vexed question whether by his Status of the Union Act and Royal Executive Functions and Seals Act of 1934 he has succeeded in establishing in law the divisibility of the Crown and the existence of the rights of neutrality and secession. Prior to the new decision it was open to contend, as was contended be-

fore the tribunal, that in vital matters the prerogative could be limited by Imperial Act only. That doctrine, the last remnant of the dogmas of the lawyers and judges of Charles I, has now received its quietus, and it appears that the connexion between the Union and the United Kingdom now rests on the will of the Union Parliament. The conclusion is of vital interest in regard to the undertaking stated to have been given to General Hertzog that the South Africa High Commission territories will be transferred to Union control under the terms of the South Africa Act, 1909; for these terms contemplated the continuance of the power of the Imperial Government to advise disallowance of Union legislation and of the Privy Council to decide appeals. The new autonomy of the Union negatives the maintenance of the former system, and will render it imperative, if transfer is agreed on, to embody its terms in a compact which the natives or the British Government can submit for authoritative interpretation to an intra-Imperial tribunal.

The contemporaneous decision in the Canadian case, *British Coal Corporation* v. *The King*, by asserting the right of the Dominion to abolish the criminal appeal to the Privy Council, has removed a long-standing Canadian grievance, for, while the tribunal regularly refused to admit appeals in such cases, its right to do so was asserted, contrary to Canadian opinion, in *Nadan* v. *The King*[1] in 1926. The result is of special value, for, as the combined opposition of the Dominion and Quebec showed, the denial of Canadian authority would have reopened the whole question of Canada's relation to this country.

[1] [1926] A.C. 482; Keith, *Responsible Government in the Dominions* (1928), ii. 1087 f.

14. AN IRISH PARADOX

To the Editor of THE MORNING POST, *22 June 1935.*

May I call attention to a paradox in regard to the effect of the Irish Treaty created by the judgement of the Privy Council on June 6, since the point appears not to have been raised in the discussions of the Dominions Office vote?

The Privy Council has ruled that under the powers of legislation accorded by the Statute of Westminster the Free State Parliament is able to repeal any provision of the Constitution enacted by the Constituent Assembly, including the clause which made the terms of the Irish Treaty the paramount law of the Free State.

Now the Supreme Court of the Irish Free State, in a decision of December 1934, ruled that the Constitution is the supreme law of the land and cannot be overridden by legislation, so that as, the Constituent Assembly made the Treaty part of the supreme law of the land, the Parliament cannot legislate contrary to it.

It follows, therefore, that as, since the abolition of the appeal, the Irish Supreme Court has been in no way subordinate to the Privy Council, the highest Courts of the United Kingdom and of the Free State take diametrically opposite views of the Treaty; the former asserts that it does not bind the Irish Parliament, the latter that it does. Presumably, however, the Irish Court will feel unable hereafter to maintain its earlier attitude in view of the obvious difficulty of it insisting on the existence of a fetter on Irish legislation which the Privy Council has denied.

May I at the same time point out that the Secretary

of State appears to have used unfortunate language in referring to the 'promise' of the transfer of the South African territories contained in the South Africa Act, 1909? Surely this term begs the whole question. The Act of 1909, following Canadian and Australian precedent, provided for the possibility of transfer, just as it provided for the possibility of the inclusion of Southern Rhodesia in the Union. But no promise was or constitutionally could be made.

15. THE FREE STATE PROBLEM

To the Editor of THE MORNING POST, *11 July 1935.*

May I comment on some points arising out of the debate on July 10 on the Irish Free State?

(1) There has been no suspension of the Free State legislation under which all non-citizens are classed as aliens.[1] All that has happened is that British subjects by Order of April 12 are exempted from the disabilities imposed on other aliens. But they are aliens in the State, and Irish citizens are in the State not British subjects. Of the validity of the legislation there is no doubt whatever since the decision of the Privy Council regarding the effect of the Statute of Westminster.

(2) But Mr. Thomas is wholly incorrect in his statement that the first effect of the declaration of a Republic by Mr. de Valera would be that thousands of Irishmen in this country would become aliens and would as foreigners require permits if they were to continue to live and work here. There is not the slightest legal justification for this allegation. The Irish Free State has no authority whatever to deprive any British subject outside the Free State of his position as a British

[1] See no. 9, *ante.*

subject, and it is deplorable that Mr. Thomas should persist in this misstatement.

(3) Sir Thomas Inskip's able defence of his own position ignores the real difficulty. In 1931 he held strongly that the passing of the Statute of Westminster would not give the Irish Free State the legal right to abolish the appeal to the Privy Council; this year he argued before the Privy Council that it did. His second thoughts were doubtless sound, but such changes of view are embarrassing and do render difficult of acceptance the various assurances given of the legal effect of the Government of India Bill.

(4) We have seen the dangers brought on France by her failure to accept in good time German offers regarding military strength. We have been offered by Mr. de Valera the association of the Free State as a Republic with the British Commonwealth of Nations and security from attack based on Free State territory. Many Republicans repudiate this offer of accommodation as energetically as do Mr. Thomas and Sir T. Inskip, but it is very doubtful whether the British Government would not be well advised to invite the co-operation of the Dominions in discussing the project fully and frankly with the Irish Free State.

16. BRITAIN AND THE FREE STATE

To the Editor of THE SCOTSMAN, *11 July 1935.*

Are we not running the risk of committing as regards the Irish Free State an error similar to that which we have freely censured as regards the relations of France to Germany? Is it wise to refuse to negotiate with Mr. de Valera while he is still prepared to offer, if the Free State is permitted to adopt formally Republican status,

to accept association for certain purposes with the British Commonwealth of Nations, and to guarantee that Irish soil shall not be used as a basis of attack on the United Kingdom? Neither the Irish Republican Army nor the party now headed by General O'Duffy, who recently was Mr. Cosgrave's ally, would concede either of these points, and there is only too much likelihood that British intransigence may see the chance of an effective settlement thrown away.

Neither Mr. Thomas nor Sir T. Inskip explained why accommodation on such a basis was impossible; the latter, indeed, seems to look forward with equanimity to the secession of the Free State from the Commonwealth. Why he should prefer this to a connexion definitely agreed upon, it is difficult to conjecture. If the issue is the feeling that severance of allegiance is inadmissible, Mr. Thomas should remember that the Privy Council judgement in *Moore* v. *Attorney-General* has confirmed the thesis, contended for in these columns,[1] that the Free State has legally severed the bond of allegiance between its citizens therein and the Crown, and has shown that the Aliens Act, 1935, of the State has legally made British subjects aliens in Irish law. The present position of the Governor-General is farcical, and his disappearance would remove a useless anomaly. Our rights as to defence could hardly be exercised in the face of a hostile Ireland, and an effective and vigilant neutrality would be of greater value. Having acquiesced in the claim of the Union of South Africa to the rights of secession and neutrality, is it too much to seek to secure genuine friendship with the Free State by some recasting of legal relations? Parliament has accepted by overwhelming majorities the far more

[1] See Keith, *Letters on Imperial Relations, 1916–1935*, pp. 150–6.

speculative projects of the Government of India Bill.

The question of Northern Ireland is not now involved. Mr. de Valera has admitted that he cannot proclaim a Republic for that area, and has negatived the idea of coercion.

It is most unfortunate that the Imperial Conference should not have been invited to discuss the issue, for it concerns the Dominions no less than the United Kingdom, and the immediate difficulties are due to policies determined upon by the Conference. Imperial no less than British statesmanship seems sadly lacking.

17. THE FREE STATE PROBLEM: A POSSIBLE REPUBLIC

To the Editor of THE MORNING POST, *19 July 1935.*

Mr. Hugh Law invites me to depart from the sphere of legal certainty to that of conjecture, when he poses the question of the position of persons who in the eyes of English law are British subjects, resident in the Irish Free State, in the event of the declaration of a Republic.

It seems to me that the Statute of Westminster, even as interpreted by the Judicial Committee, does not confer any right on the Irish Free State Government and Parliament to establish a formal Republic independent of the British Crown. Any declaration, therefore, of a Republic would in English law be wholly without effect, unless and until it was rendered valid by recognition by the Crown on the advice of the British Government, presumably with the concurrence of the other Dominions.

If such recognition were given *simpliciter*, it may be

that the King would be deemed to dissolve the bond of allegiance which under English law exists between him and British subjects, so that persons resident in the Free State, who now are reckoned British subjects while outside the State, would become aliens. But it is most improbable that recognition, if accorded, would be unconditional. Presumably the precedents suggested by cases of partial cession of territory would be followed, and it would be stipulated that those persons who wished to retain British nationality, though resident in the Free State, should be permitted to do so for their own lives.

But it may be permitted to hope that the unbending attitude of Mr. Thomas is not the last word in British statesmanship, and that a Government which has jettisoned the Treaty of Versailles may yet find it possible so to modify the Treaty of 1921 as to render otiose such speculations as these. If Germans deserve generous treatment, why should it be denied to a people who, unlike the Germans, have suffered much wrong at English hands?

18. IRISH CITIZENS RESIDENT IN GREAT BRITAIN

To the Editor of THE SUNDAY TIMES, *19 July 1935.*

As it appears from the remarks of your Irish Correspondent that Mr. Thomas's assertions regarding the position of Irish citizens in the event of the declaration of an Irish Free State Republic are taken as correct in the Free State, may I point out the true legal position?

Irish citizens while within the United Kingdom are as regards nationality governed by the law of the United

Kingdom, and in the great majority of cases they are, under British law, British subjects, and owe as such allegiance to the King. In the event of the declaration of a Free State Republic, the British nationality of these persons would not be affected so far as British law is concerned. Their status as such is independent of their Irish citizenship, and, if it were to be altered, it would be possible to do so only by the instrumentality of a British Act of Parliament, for it will not seriously be contended to-day that the King can sever by the power of the prerogative the tie of allegiance between himself and a British subject resident in the United Kingdom.

Now, Parliament might well be willing to permit those persons who, being Irish citizens before the declaration of a republic, desired to adhere to the republic to divest themselves formally by declaration of their British nationality, leaving it open to treat them as aliens and to subject them to the restrictions of the Aliens Order. But it is inconceivable that Parliament would deprive of British nationality any persons who desired to retain it, and who asserted their loyalty to the Crown. The most that it might conceivably do would be to require persons who, under Irish legislation, were Irish citizens, to disclaim that citizenship as a token of their loyalty, but it is very probable that it would refuse to take even this step.

A declaration, therefore, of an Irish Republic would at first do nothing to simplify the problem, which causes trouble in Scotland, of the presence of indigent Irish citizens, for it would not operate automatically to make them aliens who might be deported to the Free State. Later it might prove useful, since the influx of Irish could be checked as in the case of other aliens.

But what would be of far more value would be the

determination of the British Government and Parliament at the present day to assert the right, which was operative before the grant of Dominion status to the Free State, to remove from the United Kingdom Irish immigrants who become a charge on the public under conditions which render it unfair that the burden of their maintenance should fall on British central or local funds.[1]

19. MR. DE VALERA AND SANCTIONS

To the Editor of THE SCOTSMAN, *11 October 1935.*

The inevitable concentration of interest on the vindication of the League Covenant will not, I hope, result in failure to appreciate the vital importance of Mr. MacDermot's revelation of the attitude of Mr. Cosgrave and his friends to Great Britain. They have at the present crisis taunted Mr. de Valera for his failure to make a settlement of the Anglo-Irish dispute a condition of his support of the British Government's attitude in the League of Nations, a position which contrasts most painfully with Mr. de Valera's refusal to attempt to secure any concession as the price of carrying out what he holds to be a clear obligation under the League Covenant. This fact should do something to dispel the delusion, fostered by the Secretary of State for Dominion Affairs, that Mr. Cosgrave's Government was friendly to Great Britain, whereas, in fact, it was under its régime that the decisive steps were taken to nullify the appeal to the Privy Council, and to sever the connexion of the Crown with the Civil Service, the Army, and the Courts of Law.

Mr. de Valera has given a striking example of his determination, at the risk of affording an opportunity

[1] Nothing has been done to remedy this ridiculous anomaly.

of attack to his opponents of less scrupulous character, to honour in full any obligation freely undertaken by the Free State. He has given an absolute pledge that Free State territory shall not be used as a basis of attack on Great Britain. He now asks that the question of handing over to the Free State control of the harbours now occupied by British forces should be taken into consideration. The Treaty itself recognizes that there is nothing immutable in its terms as to the facilities for defence, and the part to be played by Great Britain as regards the defence of the Free State by sea. Surely there is room open for a statesmanlike discussion of the whole issue with Mr. de Valera. The Privy Council has deliberately laid it down that the Irish Parliament can repeal the authority under which British forces are legally present in Free State areas; such repeal would be most embarrassing to the British Government, and there is every reason for seeking to regulate the matter by such an accord as would give Great Britain absolute assurance that in event of war no use would be possible of Irish territory as a basis of operations against this country.

20. THE BRITISH NAVY AND THE FREE STATE

To the Editor of THE SCOTSMAN, *16 January 1936.*

Internationally, the refusal of the Free State to be aggregated with the rest of the British Commonwealth for the purpose of assessing naval strength is, no doubt, of minor importance, seeing that the State is unlikely to have the means to provide itself with a navy of substantial proportions. Nor has Germany any right to reopen the question of the pact of June 18, 1935, for that instrument expressly contemplates the case where treaty

limitation of tonnage ceases to apply, and gives Germany then the right to a percentage of 35 of the actual tonnages of the members of the British Commonwealth of Nations.

For the United Kingdom, on the other hand, some disadvantage in relation to Germany is inevitable if the Free State embarks on naval construction, for the German fleet can then be increased proportionately to the construction of the State, while the British Government will not be able to count on the Irish navy. Mr. de Valera is doubtless well aware of this consideration, and intends to use it, together with the absolute freedom of the legislature, shortly to become unicameral, to repeal the restrictions of the treaty of 1921, to induce the British Government to consent to the withdrawal from Free State territory of the remaining British forces, and the handing over to the Free State of responsibility for naval defence. His position, of course, is strengthened by the fact that the treaty itself contemplates the possibility of such transfer by agreement, and he has suggested on several occasions that he is prepared to give an absolute pledge that Free State territory shall not be used as a base of attack on the United Kingdom. There is, therefore, the possibility of an accord which might be satisfactory to both parties, and obviate the very serious position which must arise if Mr. de Valera should decide, when the abolition of the Senate gives him paramount power, to abrogate the provisions under which British forces are lawfully present on Free State territory. It might even be possible to secure arrangements under which in the event of German attack on the United Kingdom the Irish naval forces would co-operate with the British navy. At any rate, the present position as regards relations with the Free State is steadily

becoming more and more anomalous, and common sense suggests that the time has come when the British Government should be ready to reconsider the terms of the treaty of 1921. It must be remembered that the legal basis on which the views of the British Government rested was destroyed last year by the decision of the Privy Council in *Moore* v. *Attorney-General for the Irish Free State*.[1]

21. AN IRISH NAVY AND THE TREATY OF 1921

To the Editor of THE SPECTATOR, *21 January 1936.*

The intimation given by the delegate of the Irish Free State at the Naval Conference that his Government rejects the principle of treating the whole of the forces of the members of the British Commonwealth as a unit for purposes of naval limitation is of no great international importance. The Free State is not in a position to construct a large fleet and doubtless has no present intention of doing so.

On the other hand the statement serves as a reminder to the British Government and the public that the Free State is not disposed to accept any limitation on its freedom of action, and that it no longer intends to remain satisfied with the position established under the treaty that naval defence is a matter for the British Navy.

Mr. Cosgrave's government was content to leave this question alone and took no steps to secure the review of the position under the terms of Article 6 of the treaty of 1921. It is, however, clear that Mr. de Valera cannot consistently adopt the attitude of his predecessor, and that the British Government is not in a position to refuse

[1] See no. 13, *ante*.

to admit that the Free State has the same right to establish an independent navy as has the Commonwealth of Australia.

It is, however, clearly of the first importance that there should be a definite understanding between the governments regarding co-operation in war, for the Anglo-German agreement of June 18, 1935, accords to Germany the right to possess naval tonnage equal to thirty-five per cent. of the aggregate of the actual tonnages of the members of the British Commonwealth, an agreement based on the view then held that the tonnage —if any—of the Irish navy could be reckoned fairly as British tonnage. That agreement is intended to be permanent and definite; it allows no great margin of safety, in view of the necessary dispersion of British naval power, and it might be dangerous, should the Free State ever decide to embark on substantial construction without undertaking to support the United Kingdom in case of attack.

It should not be impossible to achieve accord with the Free State. The latter resents as incompatible with its international status the presence on its territory of British forces as provided under the treaty. According to the decision of the Privy Council in *Moore* v. *Attorney-General for the Irish Free State* (1935 A.C. 484), the Irish legislature possesses the power to deprive the clauses of the treaty of all legal effect in the Free State, and within a month the Senate will cease to exist. There will then be no legal barrier to the enactment of provisions by the Irish legislature which would render illegal the presence of British forces on Free State territory and the exercise of authority over such forces by their officers. It is true that the Supreme Court of the Free State prior to the judgement of the Privy Council held that the treaty

provisions could not be altered by the legislature, but it is very doubtful whether the court would now uphold that view and deny to the Free State legislature powers ascribed to it by the Privy Council. Moreover, the court is clearly undermanned, and it would be easy to add to it members who would uphold the authority of the legislature.

Such action, of course, would seem to be a breach of the treaty, but Mr. de Valera would be able to appeal to the language of the Privy Council which suggests that the Statute of Westminster, 1931, was intended to give power to supersede the treaty, and in any event a dispute on this subject would profit neither side.

Surely the time has come when a determined effort might be made to revise the treaty of 1921 and to secure in economics and politics alike that co-operation between the United Kingdom and the Free State which is dictated by fundamental considerations of common interest.

22. ABOLITION OF GOVERNOR-GENERALSHIP IN THE IRISH FREE STATE

To the Editor of THE SCOTSMAN, *26 June 1936.*

Mr. de Valera's declaration of intention regarding the abolition of the post of Governor-General signifies his decision finally to challenge the British Government on the treaty issue by securing the acceptance by the Irish Free State electorate of a measure which will for all purposes of internal government at least eliminate the Crown.

The termination of the office of Governor-General as at present constituted is unquestionably desirable. The deliberate policy has been adopted of reducing the

office to a mere farce: the Governor-General's position reflects discredit instead of honour on the Crown. Moreover, Mr. de Valera raises a fundamental point when he asserts that the head of the State should be the supreme guardian of the constitutional rights of the people. That is the position of the King in the British Constitution; that was the position of the Governor-General in the constitutions of the Dominions so long as he was appointed by the King on the advice of the British Government. When the Imperial Conference of 1930 turned the Governor-General into the nominee of the Dominion Government, it destroyed the parallel between the King and his representative, and rendered inevitable the decisive action of 1932, when Mr. de Valera removed the then Governor-General from office in order to secure that he should not be in a position to refuse assent to the Bills violating the Constitution which the Ministry had prepared.

What policy will the British Government adopt in these circumstances? It has no legal power to prevent the elimination of the Crown from the Free State Constitution. The Privy Council has ruled that legislation contrary to the Treaty of 1921 is valid. We can no longer emphasize the sanctity of treaties, when we have ourselves deliberately violated, with the conclusive approval of the Commons, the most binding of all pacts, the League Covenant. Is it not possible now to try to secure an accord, based on acceptance of a republic in the Irish Free State, with definite agreement for co-operation in defence, as suggested by Mr. de Valera? If there are adequate reasons against such a proposal, surely they must be capable of definite statement. We are prepared to negotiate with Germany despite breach of treaties. We have made important commercial

agreements with the Free State. Are we to continue indefinitely to demand Irish submission to our terms? Is there any substance for which we are contending, or is it for a meaningless formula of an unsubstantial sovereignty?

(*c*) BRITISH RELATIONS WITH THE UNION OF SOUTH AFRICA

23. SOUTH AFRICA AND NEUTRALITY

o the Editor of THE MORNING POST, *10 April 1935.*

General Hertzog has generously placed at the dis-osal of his critics the legal opinion on which he has ıstified his view that the neutrality of the Union in a ritish war is possible despite the obligations under-ıken by the Union in respect of the naval base at imonstown.[1]

The legal adviser admits that the Union Govern-ıent has given an undertaking to keep the naval base ı a state of defence, and presumably also to render ctual assistance in case of attack. Apart from this ndertaking, he holds, Simonstown would be exactly ı the same position as Gibraltar, and British rights ı respect thereof would not affect Union neutrality.

His view is that, if the Union were to implement its bligation of assistance, in the circumstances of the ase no Court of International Justice would regard s action as a breach of neutral duty. For this propo-tion I confess I am quite unable to find the slightest ıodern authority. It is notorious that conceptions f neutrality are now drastic, and the proposition ontended for seems wholly impossible of serious con-deration.

The legal adviser does not adduce a single modern uthority to support his view, but relies on the famous pisode of 1788, when Sweden criticized Denmark for ffording aid to her enemy Russia under a treaty of 781, and on the fact that in 1826 Canning felt entitled) assist Portugal against Spain in pursuance of old :eaties. Action of this sort is, as Fauchille says, con-

[1] See Keith, *Letters on Imperial Relations, 1916–1935*, pp. 350, 351.

trary to the essential nature of neutrality, and he asserts that in 1788 Russia solved the difficulty even then felt by renouncing the use of the troops supplied by Denmark.

I fear, therefore, that General Hertzog is acting under a complete misapprehension of the modern law of neutrality; possibly contact with the British Government on his approaching visit to London may enable him to ascertain definitely the prevailing doctrine on this question.[1]

24. SOUTH AFRICAN NEUTRALITY AND IMPERIAL DEFENCE

To the Editor of THE SCOTSMAN, *10 June 1936.*

The Dominions Secretary has demanded hard thinking on the issue of the preservation of unity of purpose in the Empire, and we may justly expect from him a determined effort to put his demand into operation. The opportunity is afforded by the visit of Mr. Pirow to discuss defence and foreign relations with the British Government. Now, hard thinking clearly demands that the Union Government shall be asked to make up its mind on the vital issues of neutrality and secession. It is quite unnecessary for the Union to abandon its claim of absolute sovereignty. The point is that no useful plans can be made except on the definite basis of an agreement for co-operation under which, for a definite period, Britain may count on the Union's not seeking to put in operation its claim of right to be neutral or secede.

British defence plans for the Empire plainly demand that the Navy should be able to reckon on a base in

[1] This visit seems to have left him unenlightened, and he seems to have converted General Smuts to his quite untenable views.

the Union, to which Union forces would render full support in case of attack. At present the only agreement is that of 1921, which was made by a Government which denied the right of neutrality or secession. Since then the Statute of Westminster and the Imperial Conference have enormously enlarged the ambit of Union sovereignty. It is, therefore, urgently necessary that the agreement of 1921 be revised and brought up to date, and that it be submitted for the approval of the Union Parliament. Circumstances have so completely altered since it was made that its continued validity has been freely called into question in the Union. Mr. Pirow himself has been thought to favour its abrogation in the past. The overthrow of Ethiopia seems to have opened his eyes as well as those of General Hertzog and General Smuts to the dangers of the situation, and it may well be that he would now advocate a formal alliance. Anything else is wholly unsatisfactory. Moreover, some further hard thinking might lead to the necessary steps to bring the Irish Free State into effective treaty relations with the Empire.[1]

A very different and quite deplorable outlook is suggested by the amazing assurance given by Sir S. Hoare at Cambridge that 'the Empire is a great self-contained economic unit founded on common principles, and big enough for contentment to grow up within its borders'. Such a dictum is only consistent with complete absence of thought or complete igno-

[1] From the remarks made by Mr. Pirow on his return to the Union it appears that the continuance of the accord of 1921 was arranged, and that, therefore, the Union has definitely once more undertaken an obligation regarding the British naval base inconsistent with neutrality. British aid was also given in planning the improvement of the defences of Capetown, but no question of fixing the naval base there arose.

rance of economics. Does Sir S. Hoare, after years at the India Office, really believe that India can flourish in a self-contained Empire? Has he never heard of the reciprocity treaty between Canada and the United States which has crowned the often repeated efforts of the Dominion for larger trade opportunities? Or does he not know that 30 years ago Mr. Joseph Chamberlain found that the idea of a self-contained economic unit had no appeal to the Colonies? For economics and defence alike the Empire cannot be self-contained.

25. OUR SOUTH AFRICAN PROTECTORATES

BRITAIN'S MORAL OBLIGATIONS

To the Editor of THE MORNING POST, *15 March 1935.*

It is, I think, most regrettable that General Hertzog should have decided to select the occasion of his visit to London to take part in the King's Silver Jubilee Celebrations to demand the transfer of the Bechuanaland and Swaziland Protectorates and the Colony of Basutoland to the Union. His decision places the British Government in a difficult position, since their desire to do honour to a welcome guest must conflict with their obligation to the people of these territories.

(1) General Hertzog, I gather, takes the view that the Union is entitled to have these territories transferred if and when addresses are presented from the Houses of Parliament of the Union under s. 151 of the South Africa Act, and that His Majesty cannot constitutionally refuse to take action when the request is made by the Union Government.

This contention appears to me to be wholly unjustified, both historically and legally. When the power was given to the King 'with the advice of the Privy

Council' to transfer the territories, it was never intended by the British Government of the day to exclude its sole right to decide whether transfer was expedient. The Union was just being created, and it was felt that it would be prudent to provide for the terms on which the territories should be administered, if transferred; but the British Government could not possibly bind itself or any successor to act automatically on the request of the Union Government.

It is true that the Royal Executive Functions and Seals Act, 1934, of the Union purports to authorize the Governor-General in Council to exercise the powers of the King in Council under the South Africa Act, but I doubt if General Hertzog himself would deem it possible to act on this power, which the British Government could not recognize.

TRANSFER WITHOUT THEIR CONSENT

(2) The question, therefore, is one of the moral obligations of the Crown. Has the Crown the right to transfer the people of these territories to the control of the Union without their consent? The nearest parallel is the case of the Indian States, and in their case it was definitely laid down by the Indian States Committee that it would not be right for the Crown to place their relations with it in the hands of the Governor-General of India if he were to be advised by a responsible Government. Legally His Majesty could have ignored this opinion, but in fact it has been respected, and morally the position as regards the African territories seems to stand on the same footing.

(3) Moreover, conditions have completely changed since 1909. It was then contemplated that the administration of the territories, if transferred, should be

conducted on a defined basis, under which the Crown, advised by the British Government, would have had the right to disallow any legislation of which it did not approve. Not only has the right of disallowance of Union legislation been formally abolished, but the whole structure of the relations between the Union and the United Kingdom has been remodelled. General Hertzog has carried out by the Status of the Union and the Royal Executive Functions and Seals Acts his purpose of establishing the divisibility of the Crown, and the rights of secession and of neutrality, and the transferred territories would have to follow the decisions of the Union.[1]

Further, it was still possible to hope in 1909 that the Union would ultimately adopt the doctrine of equality of rights for civilized men, but in lieu General Hertzog has definitely committed himself to the doctrine of the paramountcy of the interests of the white race. No one can suppose that he contemplates maintaining in the territories, if taken over, the present rule of administration with the view of conserving native rights.

At the very least it seems clear that the appeal of Tshekedi Khama should be listened to, and that inquiry by a Commission should precede any decision by the British Government. If, on the whole, transfer then seems justified, it would have to be arranged on terms securing the British Government effective power to intervene to preserve native rights, and to prevent the territories being removed against their will from the suzerainty or sovereignty of the Crown.

[1] See Keith, *Governments of the British Empire*, pp. vii, 17, 34, 98, 272, and no. 10, *ante*.

26. THE PROTECTORATES IN SOUTH AFRICA

EFFECT OF PRIVY COUNCIL JUDGEMENT

To the Editor of THE MORNING POST, *9 June 1935.*

The decision of the Privy Council in the Canadian and Irish Free State appeals, inevitable as it was under the Statute of Westminster, has a vital bearing on the issue of the transfer of the High Commission territories in South Africa to the Government of the Union under the terms of the South Africa Act, 1909.

It is no longer open to dispute that the effect of the Status of the Union and the Royal Executive Functions and Seals Acts, which General Hertzog had passed last year, is to give validity in law to his triple doctrine of (1) the divisibility of the Crown; (2) the right of neutrality; and (3) the right of secession. The Union Parliament is now beyond doubt an absolutely sovereign legislature, incapable of restraint by any external power, and incapable of fettering itself.

It is clear, therefore, that transfer under the Act of 1909 of the territories cannot be contemplated. The scheme of 1909 assumed that the Crown, on the advice of the British Government, would have the power to disallow any legislation by the Union contrary to the principles embodied in the schedule to the Act defining the mode of government after transfer. It assumed also that the Privy Council would remain accessible to the natives, to declare invalid any departure from the régime established by the schedule in their favour. On transfer now both assumptions would cease to be valid.

The whole matter accordingly must be reviewed *de novo*. The Crown in the Union is distinct from the

Crown in the United Kingdom, and the relations of the natives with the Crown are with the Crown in the United Kingdom. To transfer control of the territories without the assent of their people to the Union would be as indefensible as to hand over to the Governor-General of India, advised by a responsible ministry, control of the Indian States. It may be desirable that transfer should take place, but such transfer should clearly be delayed until it can be effected with the assent and goodwill of the people affected.

Before such assent can be expected, it will probably be necessary that terms of transfer should be arranged between the British and Union Governments, and, since such terms cannot under the judgement of the Privy Council be made binding in municipal law, it will be requisite that an inter-Imperial tribunal shall be designated to decide any allegations that the terms have not been observed. The lack of an agreed tribunal has been proved by the case of the Irish Free State to be a most serious obstacle to the peaceful settlement of inter-Imperial controversies.

27. CROWN PROTECTION OF NATIVE TRIBES AND THE BRITISH MADNATES

To the Editor of THE SCOTSMAN, *23 April 1936.*

Tshekedi and his tribe are essentially in the right when they protest against the inclusion in the Budget of the Union of South Africa of £35,000 for the assistance of the native territories. It is an initial step towards compelling the consent of the natives to incorporation in the Union, and acceptance by the British Government means an irrevocable step in the path of transfer. It seems to me deplorable that loyal

tribes should thus see themselves driven to submit to severance from the Crown in the United Kingdom and to being placed under a government which claims, with the approval of Parliament, the right of neutrality and secession, and which has organized its Air Force with the primary view of countering unrest by bombing. Italy, it will be remembered, has not without point cited the Union treatment of the Bondelzwarts as a precedent.

If the British Government will not resist the Union demand for the native territories, and will not take the fair course of promising that they will not be surrendered without the assent of the majority of the natives, how can it be expected to resist the demand of Germany for the return of the mandated territories? The native territories fell to the British Crown by agreements freely entered into, which form an obligation of honour, seemingly now to be disregarded as completely as the British obligations under Article 16 of the League Covenant. The mandated territories are under British control by right of conquest and cession, not by the free will of the natives, and the British right to hold them rests on no higher foundation than the French right to the demilitarization of the Rhineland. If Mr. Churchill does not recognize the position, the British Government evidently does, and it has brought Mr. Thomas round to the position of the Chancellor of the Exchequer. The mere fact that Germany treats the matter as one of prestige makes her claim far more insistent and dangerous, and, while it is very painful to contemplate the diminution of British authority, there is, after all, something to be said for the maxim of Queen Victoria: 'It is, I think, important, that the world at large should not have the impression that we will not let any one

but ourselves have anything, while at the same time we must secure our rights and influence.' What Mr. Thomas might profitably consider is whether any effective measures can be provided to safeguard native interests in any territories which are transferred, whether to Germany or the Union.

28. THE SOUTH AFRICAN FRANCHISE

To the Editor of THE SPECTATOR, *15 May 1936.*

The Duke of Montrose's letter on the South African franchise assures us that the movement among the intelligentsia of the Universities of South Africa in favour of a broad-minded policy in native matters is on a level with the devotion of Oxford to the Red Flag. This view demands careful consideration, for the one serious argument recently adduced by Mr. Curtis in his effort to induce us to surrender to the tender mercies of the Union the native territories was that this movement was a growing power and would, in due course, vitally affect the Union outlook. I am bound to say I was, from what I have seen of Union nationals in this country, dubious regarding the value of this contention, and I am not surprised to learn of the Duke's opinion based on thirty-six years' intimate association with the country.

The Duke, however, seems to have missed the whole point with regard to the franchise. No person in his sane senses has ever contemplated a common franchise for black and white at the present day. The principle which was at stake in the recent legislation was whether the Union should abandon definitely the maxim of Cecil Rhodes of equal rights for all civilized men, or should adopt the view that colour forms an impassable

bar between Union nationals. When the Union was formed, it was agreed to maintain the native franchise in the Cape, which was definitely narrowly limited to secure that those who enjoyed it were worthy of it, and to safeguard it. The British Government and Lord Selborne would gladly have seen the beginnings outside the Cape of a native franchise leading up gradually after many years to the full franchise for civilized natives, and Lord Selborne (the Duke has forgotten the facts) pressed this vainly on the Convention which framed the constitution. When the constitution was enacted by the British Parliament, it was in the hope that the principle of Rhodes would gradually triumph, and that natives would receive more just consideration as time passed. In fact, of course, native policy has become increasingly more oppressive, and finally, by taking away the Cape native franchise as it existed, the doctrine of racial inferiority has been stereotyped.

I confess I cannot understand the view of the Duke that the franchise question and miscegenation are combined. Miscegenation came into being inevitably as soon as the first settlement of the country took place, and depends on causes wholly alien from the franchise. Nor can I understand his naive faith that the Union House of Assembly will not turn down recommendations made by a Council of Native Representatives without very good reason. A legislature, as the whole of British experience here and overseas proves, looks after the interests of those who vote for it, and native representation in the House will be negligible. If the Duke will study the history of the native question since Union, he will find that the House has had before it sound advice in abundance, but that the narrow interests of the European population have always carried

the day. How the existence of a Council will prevent the colour question arising, I confess I am totally unable to understand.

The practical importance of the decision of the Union is that it places the question of the transfer of the native territories in a new light. That transfer was contemplated in 1909 on the basis of an ultimate settlement on the Cape lines of the franchise issue, a vote for civilized Africans, and of conditions to secure full control by the British Government of the maintenance of the system of administration provided in the schedule to the South Africa Act. The possibility of such control has admittedly been swept away by the Statute of Westminster, 1931, and the Union has definitely committed itself to the doctrine of disabilities based on race as final. Small wonder if the natives of the territories are deeply perturbed at any prospect of transfer to the Union.

29. THE FRANCHISE AND THE TRANSFER OF THE NATIVE TERRITORIES

To the Editor of THE SPECTATOR, *6 June 1936.*

The Duke of Montrose has added to his error regarding Lord Selborne's views which I corrected in your issue of May 22[1] a much more amazing error regarding those of Cecil Rhodes. The only excuse I can imagine is that he wrote his political articles at Groote Schuur in the days before Rhodes made his great advance and enunciated his doctrine of equal rights for all civilized men. But before depriving Rhodes of his due meed of honour he should have consulted one or other of the excellent biographies of that

[1] See no. 28, *ante*.

statesman. As Rhodes had an infinitely greater knowledge of natives civilized and uncivilized than any one in this country, I am perfectly content to rely on his judgement.

The Duke has once more completely missed the point regarding the franchise and miscegenation. He really should know that the miscegenation started under the Dutch régime, when no votes were given to white or black; that it persisted in the Cape under the British régime under Crown Colony Government; and that it existed in the Dutch Republic when votes were refused to natives. It is perfectly clear that the franchise and miscegenation have nothing whatever to do with each other in British South Africa, and an elementary knowledge of the history of the Portuguese Empire would suffice to prevent any attempt to deduce conclusions from Portuguese Africa.

There is, of course, no 'Cape legislation' in question. The Cape Provincial Council has no legislative power as to the franchise. The Union legislation does destroy, and if the Duke had troubled to read General Hertzog's explanation of it he would have seen that it was intended to destroy, the one matter in the Union in which there was a remnant of equality between white and native. As the Duke from his disastrous excursion into Scottish Nationalism has just found refuge in Liberalism, it is singularly unfortunate that his new leader in the Lords should, when the South Africa Act, 1909, was being passed, have committed himself and the whole party to the just and honourable view that the Cape native franchise, based on property and education tests, should be preserved as the true line of development. I hardly imagine that the new recruit will alter the settled Liberal view, and still less do I

imagine that he speaks for Scottish Nationalism on the subject.

The Duke's reference to my 'dubious' sneers at the quality and 'narrow interests' of certain Union Nationals he happens to have met is absolutely inexcusable. What I did say was that from what I had seen of Union Nationals I was dubious of Mr. Curtis's contention regarding the growth in the Union of a broad-minded policy in native matters, and that in this view I agreed with the Duke. To convert this into a 'dubious' sneer at the quality of Union Nationals I had met goes beyond the Duke's usual margin of inaccuracy.

As regards the transfer of the Native territories to the Union, argument with the Duke may be deferred until he again visits South Africa and learns by inspection the vital fact that the Bechuanaland Protectorate is not surrounded, as he alleges, by the territory and jurisdiction of the Union Government, and that Southern Rhodesia has views on the issue. In the meantime he might suggest to Lord Crewe that the pledges which, with the express approval of King Edward VII, he gave to the natives of the territories are to be ranked with the 'egregious mistakes made by well-meaning people at home'. Or can it be that he has joined the Liberal party without knowledge of its position in this matter? Many Scottish Nationalists, I am glad to say, believe in keeping faith with natives.[1]

[1] The issue of transfer was raised by General Hertzog in the Union Parliament on June 11, when he announced that the Union would probably take over the administration of Swaziland in two years' time and that of the other territories at no distant date. It does not appear that the natives of Basutoland or the Bechuanaland Protectorate have been consulted on this project, which clearly menaces their future.

30. THE TRANSFER OF THE NATIVE TERRITORIES AND THE SOUTH AFRICAN FRANCHISE

To the Editor of THE SPECTATOR, *27 June 1936.*

The Duke of Montrose has characteristically made no apology for the misrepresentations of the views of Lord Selborne and of Cecil Rhodes of which I have convicted him, but instead has given a further exhibition of his infinite capacity for error, which has made him so *damnosa* a *hereditas* to the cause of Scottish Nationalism, by attacking the Professor of History in Edinburgh University under the impression that he is attacking me.

The Duke evidently knows nothing about the policy as regards the Native Territories in South Africa of the party which has had the honour of receiving his accession. If he will for once take the elementary precaution of ascertaining facts before making allegations, he will find that his party is pledged to the policy that the territories shall not be transferred to the control of the Union until after full consultation of the natives affected and of the House of Commons. Moreover, the whole issue was elaborately discussed by the two Governments last year, and the decision of the British Government, which is to the same effect, has been notified. In the face of these notorious facts it is absurd to say that the people on the spot 'will take over the Native Territories and govern the country without help or gratuitous advice from us'.

General Hertzog has renewed native unrest by his assertion on June 11 that the Union would take over Swaziland in two years and later Basutoland and Bechuanaland. The case of Swaziland is of minor

importance, but the other two territories stand in a very different position. The Bechuanaland chiefs on June 12 at once reiterated their desire to remain in direct relations with the King, and the Bamangwato have unhesitatingly rejected the £35,000 loan for water-supplies included in the last Union budget. Native opinion is clearly as bitterly opposed as ever to transfer.

On the legal issue it ought to be pointed out that the only method by which transfer to the Union can be effected is by the exercise of a very doubtful power, the right of the Crown to transfer the right of protection and the authority connected therewith to a totally distinct sovereignty, that of the Union of South Africa. If the King can do so without the consent of the tribes, then he equally has the right to transfer to the control of the Central Government in India, when it becomes responsible to the electorate, the rights he has of protection over the Indian States. In the case of the States the Indian States Committee recognized that such action would be unconstitutional and unjust, and there is no ground to distinguish the two cases. It is morally and constitutionally binding on the King not to transfer these territories except with the assent of the majority of their people. Unfortunately the native policy of the Union, including the decisions as to the native franchise, has rendered the natives more than ever justly suspicious of transfer.

I must add that, so long as the Union claims the right of secession and neutrality at will, for which the legislation of 1934 provides fully the means, it seems to me impossible to transfer to the Union natives who have put their faith in Queen Victoria and her successors. We are not really compelled to subordinate our policy to the will of the Union.

(*d*) THE POSITION OF THE CROWN IN THE COMMONWEALTH

31. THE RESERVE POWERS OF THE CROWN

8 July 1936.

It is the thesis[1] of Dr. Evatt, a Justice of the High Court of Australia, that the reserve powers of the Crown, whether in Great Britain or the Dominions, are dangerously wide, especially from the point of view of political Labour, and that they should be defined. The points concerned are the right to refuse a dissolution, to dismiss Ministers possessing the confidence of the majority of the elected Assembly, to insist on a dissolution against the will of Parliament and Ministers, to refuse assent to legislation, and in the case of the United Kingdom to create peers. There is also uncertainty regarding the relation of the Prime Minister to other Ministers. He argues that it would be possible to define by legislation the principles which should govern these matters, and authorize the Courts or specially constituted tribunals to deal with alleged violations of these principles, conferring on them the right to issue mandamus or injunction against the Crown.

It is clear, of course, that there is no chance of the project of Dr. Evatt being given effect under present conditions. He himself fails to present us with the concrete proposals which would have to form the basis of intelligent discussion, and it is far from clear that he has even taken the preliminary step of formulating them for himself. The whole matter is really reduced to an absurdity by Professor Laski's conclusive dictum in his Foreword; he approves definition, but adds: 'No action can be taken which does not command

[1] *The King and his Dominion Governors* (1936).

the full and unfettered assent of political parties both here and in the Dominions.' That such assent will be forthcoming at any date we can foresee may be ruled out. It need only be added that it would be a very grave error to entrust power to control such issues to the ordinary Courts. Human nature being what it is, the inevitable result would be that judicial appointments would be made with definite regard to the value of having a political partisan on the Court, and the Court itself, if called upon to decide a difficult political issue, might easily lose prestige with the supporters of the party injuriously affected by its decision. The creation of a special tribunal would raise the utmost difficulty, and Dr. Evatt makes no concrete suggestion on this head. There can be little doubt that the general view in legal and political circles alike is sound; there is room in a Constitution for reserve power, and it should be exercised by an authority above party, but not a Court. It is extremely significant that Mr. de Valera, who destroyed the independent authority of the representative of the Crown when he dismissed the Governor-General in 1932 lest he should carry out his constitutional duty of refusing assent to an Act violating the Constitution, has now declared in favour of an elected head of the State charged with the duty of maintaining the Constitution from violation. In the United Kingdom we have happily a hereditary monarch whose right and duty in this regard are beyond dispute; in the Dominions the unfortunate initiative of the Commonwealth in securing in 1930 the right to appoint the Governor-General, unwisely concurred in by the British Government and the other Dominions, has created a position in which the head of the Government is deprived of

all real power to protect the people from the possible tyranny of Parliament and Ministers. It is curious that there was such complete blindness at the Imperial Conference of 1930 to the grave blow dealt at the conformity of Dominion Constitutions to the British type, but it must be remembered that the driving power at that Conference was derived from non-British participants, the representatives of the Union of South Africa and the Irish Free State, and from the exponents of Labour views in the United Kingdom and Australia. It is satisfactory to see that, if tardily, recognition is being accorded to the grave error then made.

As Dr. Evatt's remedies are impossible, we can only fall back on the effort gradually to establish conventions governing the matters in conflict. But the task is not facilitated by Dr. Evatt, for he is far from satisfied with the prevailing doctrines, and suggests new views, which outside Labour circles are hardly likely to gain much support. Curiously enough he is anxious to belittle the significance of the King's grant of a dissolution to Mr. MacDonald in 1924[1] without exploring the possibilities of obtaining another Ministry able to carry on the Government without a dissolution, and to support the unfortunate suggestion of Mr. Asquith that in such a case a dissolution need not be accorded. This is to ignore the fundamental principle that the electorate should be sovereign, and that, when its will has been ineffectively expressed as in 1923, it is in the public interest to ascertain definitely its wishes. Only under very exceptional conditions can it be right to refuse a dissolution; and as against Mr. Asquith, whose views necessarily were deeply affected by consideration of the future of his party, it is necessary to insist that

[1] pp. 65–9.

the prime duty of the Crown is to accord a dissolution, and that only as a last resort is it proper to seek to secure an alternative Ministry to evade the decision of the people. Happily, for the soundness of this view as against that of Dr. Evatt, there is conclusive Australian authority in the action of Sir Isaac Isaacs in 1931 in granting Mr. Scullin a dissolution, when he expressly approved my views.[1]

On the episode of Lord Byng[2] Dr. Evatt has a novel, but very unacceptable theory. I held at the time, and Mr. Mackenzie King adopted my view, that Lord Byng should have given him a dissolution, since the King would have done so in similar circumstances in the United Kingdom. The Canadian electorate affirmed the position of Mr. King, largely, in the opinion of many observers, on this constitutional ground, and the Imperial Conference of 1926 expressly assimilated the position of the Governor-General to that of the King. This seems clear enough, but Dr. Evatt has a different view. Lord Byng, he holds, did not err in refusing a dissolution to Mr. King, but in his attitude to Mr. Meighen's request for one. He should have declined it and recalled Mr. King. But this suggestion is remote from the realities of life. All the conclusive arguments in favour of granting him a dissolution were urged on the Governor-General by Mr. King, but Lord Byng was unconvinced and placed himself in the hands of Mr. Meighen, who accepted responsibility for his action. Thereafter Lord Byng could refuse Mr. Meighen's demand for a dissolution only by the humiliation of going to Mr. King and begging him to forgive his error and to undertake to accept responsibility for his refusal of a dissolution

[1] pp. 236, 237. [2] pp. 55–64.

to Mr. Meighen. No one could expect an English gentleman, least of all the victor of Vimy Ridge, thus to act, and Lord Byng in fact remained steadfast in his decision, erroneous as it was; had he done otherwise, his position in Canada would have been untenable.

It is regrettable also to find in Dr. Evatt a critic of the famous decision of Sir P. Game to dismiss Mr. Lang for his refusal to obey the law.[1] For most people the emphatic approval of the dismissal by the electorate immediately after seems conclusive, unless we accept the dangerous doctrine that a Ministry once elected is above all control, except by the Courts in so far as they can act. Dr. Evatt admits that the Premier was definitely defying a Proclamation of the Governor-General of the Commonwealth whose legality was accepted by the great body of legal opinion in Australia, and is in my view beyond shadow of doubt. He was precipitating a most dangerous dispute between federal and state authority, and, as the Governor rightly conjectured, was running deliberately and knowingly counter to the will of the electorate. His action, moreover, was threatening to ruin the credit of the whole of Australia overseas, and if persisted in the gravest injury to the Australian financial position might result. To say that in these circumstances the Governor should have left the matter to the Courts is to ignore realities, and to forget the heavy weight of responsibility which the Governor would have had to bear for the flagrant violation of the laws which the Constitution makes expressly binding on him as well as on his Premier. It is to the credit of Sir P. Game that he ignored the advice even of so high an authority as Sir Harrison

[1] pp. 157–74.

Moore to act earlier, and that he waited until he could strike a decisive blow for respect for law and the fundamental interests of the people of New South Wales.

It is even more regrettable to find Dr. Evatt approving the action of the Acting Governor, and later the Governor of Tasmania, in assenting to Bills to which the Legislative Council had not agreed.[1] The position is exactly the same as if the King were to assent to a Bill without assuring himself that it had been passed by the House of Lords or under the procedure of the Parliament Act, 1911. Such action by His Majesty is inconceivable, and it should have been equally inconceivable in Tasmania. Dr. Evatt argues that the issue of the legality of the measures assented to could have been tested in the Courts, but he must know that the contemporaneous opinions of the leading Australian lawyers were agreed (1) that the Acts were invalid and the assent improper, and (2) that to challenge the Appropriation Act in its operation would be difficult for technical reasons and plainly politically inexpedient. The gravity of the situation was increased by the fact that the Acting Governor was also Chief Justice, and therefore a person from whom the fullest respect for law was to be expected. I had always understood that the episode was regarded in Australia as indefensible, and it seems to me deplorable to find that so fatal a breach of the rule of law is defended by a justice of the High Court. Happily in this case also one can appeal to the very different attitude of Sir Isaac Isaacs,[2] who, when asked to approve regulations of possibly doubtful validity, satisfied himself before making them of their *prima facie* validity in law, as afterwards confirmed by the High Court. It

[1] pp. 178–84. [2] pp. 185–9.

seems to me an elementary principle that no man, and certainly not a Governor, has any right to do what he knows to be illegal, and that Dr. Evatt's views may prove destructive, if acted on, of the rule of law.

There are many other matters on which it is impossible to agree with Dr. Evatt. He doubts the suggestion I made in 1933 that s. 4 of the Statute of Westminster, 1931, cannot in strict law bind the British Parliament, but in 1935 Lord Sankey expressed the same view as a matter of abstract law.[1] He suggests that the Union of South Africa Parliament, despite the Statute, may be able to fetter its own future freedom, but the Privy Council has definitely negatived that view,[2] and its decisions still bind the Union Courts. He ignores the vital importance of the power of the Union Government to select and remove its Governor-General, suggesting that he might still dismiss a Ministry as did the Governor of New South Wales, and forgetting the vital point that Sir P. Game in 1932 was neither chosen by, nor liable to removal at the will of, the New South Wales Government. This error is in accord with his tendency to assimilate the position of the States to those of the Dominions. In doing so he ignores the essential criterion, usage. In theory there is no sound reason, as I pointed out in 1916, for differentiating the cases; but it is the business of students of the Constitution to accept facts, and the Imperial Conference Resolutions of 1926 and 1930 could have no effect on the States because they were arrived at without their sharing in them. The States are not dependent on the Commonwealth, and it is impossible to alter the constitutional rules affecting them without

[1] *British Coal Corporation* v. *The King*, [1935] A.C. 500, 525.
[2] *Moore* v. *Att.-Gen. for Irish Free State*, [1935] A.C. 484.

consulting their wishes, and the British Government has indicated reluctance to make changes for one State only. The position of the Canadian Provinces is the same. Dr. Evatt may think that the rules affecting Canada should be applied therein, but that is a matter to be decided by the Provinces and the Dominion which appoints and removes the Lieutenant-Governors, and they may not agree with the view of British or Australian jurists.

It is natural that Dr. Evatt in writing of British practice should be less interesting than when commenting on Australian issues from the Labour party standpoint. A curious assertion[1] that the House of Commons does not meet between July and April vitiates the argument based thereon, and the author's views of the crisis of 1931 are unduly biased by reliance on the point of view of the Labour party. It is quite impossible to accept the suggestion of Mr. Woolf[2] that the precedent might be developed so that the Crown might be used to break down the democratic system of party government and to introduce a system not materially different from a dictatorship. These suggestions come from the error of failing to distinguish between the conduct of the Prime Minister and the King. It may well be held that a Prime Minister who has by the financial policy which he has allowed his Cabinet to adopt brought the country into imminent financial danger of a grave kind was not morally entitled to repudiate his responsibility and throw his colleagues to the winds, issuing from the crisis as the head of a National Government. Lord Parmoor's judicious condemnation of his action is doubtless just. But the position of the King was very different. It

[1] p. 114. [2] p. 11.

was his duty to secure for the country a Ministry which most swiftly would restore financial security, and avert if possible what was then believed to be the serious injury of the suspension of the gold standard. When it appeared that this could best be accomplished under the reconstruction of the Ministry by Mr. MacDonald, he was fully justified in adopting this course of action. We cannot seriously contend that he should have excluded Mr. MacDonald from office, and unless we do so we cannot justify any criticism on the precedent as leading possibly to dictatorship or even agree that there is any suggestion in the incident of theories of constitutional form being adjusted overnight to suit the interests of Conservatism. The difficulties of the King are so patent that it is most important that no criticism should be passed on royal action unless it be really justified. It should have been recorded that Lord Passfield, no mean judge and himself a sufferer from the crisis, bore generous testimony to the entire correctness of George V's action throughout.[1]

Further correction of errors is perhaps unnecessary, but the general criticism must be made that the author does not realize sufficiently the evolutionary character of responsible Government, and that with the passage of time what was once proper ceases to be so. He fails also to remember that the Imperial Conference of 1926 could not change constitutional law; it presented a programme which was worked out in 1929–30 in a sense which might seriously have perturbed statesmen who accepted the findings of 1926. He forgets also that the passing of the Statute of Westminster, 1931, was vital in law; indeed, so much so

[1] See my full treatment in *The King and the Imperial Crown* (1936).

that Australia and New Zealand have so far refused to adopt its terms. In particular the Irish Free State and the Union of South Africa have introduced a revolutionary change in their establishment of direct relations with the Crown, the final result of which may well be the vital change in the structure of the Commonwealth. Failure to remember these facts[1] has resulted in the author's repeated attempts to show inconsistency of view on my part, forgetting that the matters in question are determined by the acts of politicians and the Crown, and that it is the business of constitutional lawyers to accept the *fait accompli*, even if they reserve the right to criticize and to suggest other lines of development. Indeed, from Dr. Evatt's insensitiveness to constitutional developments one may deduce a further argument against entrusting to judicial hands the delicate work of adjusting political action to emergent circumstances for which precedent is lacking.

[1] Treated in full in my *Governments of the British Empire* (1935).

(*e*) BRITISH RELATIONS WITH EGYPT

32. BRITAIN AND EGYPT: THE RESTORATION OF THE CONSTITUTION

To the Editor of THE SCOTSMAN, *15 November 1935.*

It may be hoped that the British Government, strengthened by a fresh mandate from the country, will not repeat the errors of Mr. Lloyd George's Government in regard to Egypt. At that time the preoccupations arising from the war settlement were allowed to serve as a reason for postponing the due handling of the grievances of the Egyptian people, and it will be most unfortunate if the war between Italy and Ethiopia is permitted to excuse delay in conceding a reasonable settlement regarding the restoration of constitutional government to Egypt.

It must be remembered that the British right of intervention regarding the constitution rests on a very slight basis. The British Government, when it declared the independence of Egypt in 1922, made no reservation on this head, and indeed could not have done so with any appearance of consistency. Any right it has to intervene must be justified on the ground that it is impossible to safeguard those interests which were retained under the declaration of 1922, without interfering in the constitutional arrangements of Egypt. The position is clearly very delicate. The constitution of 1923 cannot be pronounced as in theory unsound, for it was permitted to take effect by the British Government, and the only argument must be that it is incapable of successful operation in practice. It adds to the difficulty of the British Government that it permitted the enactment of the Constitution of 1930,[1] which is open

[1] This was illegally enacted by royal authority to restrict the exercise

in theory to the gravest objections, and which it now admits to have proved universally unpopular. It is a very grave position for the British Government to resist the proposal of the Egyptian Government with the assent of the King to restore a Constitution to whose introduction it itself assented in 1923, and which, unlike that of 1930, is frankly democratic.

It will be most unwise if the British Government contents itself with a veto on democracy and a vague suggestion of future adjustments.[1] Egypt should be plainly informed to what points in the Constitution of 1923 the United Kingdom cannot now assent, and suggestions should be made for their amendment with a view to the early restoration of constitutional government. What can remain over for settlement is the adjustment of the reserved matters of 1922, for their bearing on constitutional government in Egypt is plainly remote.

33. BRITISH TREATY RELATIONS WITH EGYPT

To the Editor of THE SCOTSMAN, *13 December 1935.*

It is earnestly to be hoped that the British Government will take advantage of the chance which now appears to be afforded of securing a settlement of relations with Egypt, and that Sir Samuel Hoare will not repeat the error he made in objecting to the restoration of the Egyptian Constitution of 1923, a matter in which the British Government had no right of intervention under its own Declaration of 1922. That Constitution

of the franchise by supporters of the Wafd; in consequence that party refused to take part in the elections of 1931.

[1] This policy was announced by Sir S. Hoare, Nov. 9, 1935, causing deep resentment in Egypt and resulting in a coalition of parties to resist this illegal intervention.

is a perfectly reasonable instrument, and the only alternative to its restoration was autocratic rule. To construct a Constitution which would refuse power to those preferred by the majority of the people, as Sir Samuel Hoare seems to have wished to do, would have been wholly incompatible with the principles professed by this country, and contrary to the best interests of Egypt.

The draft treaty of 1930 is doubtless not without imperfections,[1] but, taken on the whole, it offers a real chance of establishing between Egypt and this country a lasting alliance within the framework of the League of Nations and of securing the maintenance of British control in the Sudan. Doubtless it could not well be brought into immediate operation, but it would certainly be foolish to refuse immediate discussions. As has been admitted by responsible authorities, many of our difficulties in Egypt were caused by the refusal of the British Cabinet at the close of the war forthwith to take into consideration Egyptian demands, and it would be deplorable if the error were now to be repeated.

34. THE ESSENTIAL PROVISIONS OF A NEW TREATY

To the Editor of THE SCOTSMAN, *24 January 1936.*

May I point out that the failure of the negotiations of Mr. MacDonald's Ministry in 1930 with Nahas Pasha for a treaty was due, not to internal difficulties, but to the insistence by that statesman on concessions regarding the Sudan, which it was felt impossible to make? It was, however, most fortunate that the proposed treaty did not become operative, for there is little doubt

[1] Lord Lloyd, *Egypt since Cromer*, ii, ch. xviii.

that its provisions for safeguarding British communications were inadequate, and that the present negotiations must be based on a definite recognition that full and effective means to secure this British interest must be provided for. It ought to be possible to secure an accord, if Egyptian statesmen are sensible. The attack by Italy on Ethiopia should serve to remind them of the importance of securing the alliance of the United Kingdom, whose friendship is essential to safeguard Egypt against interference with the receipt of the supplies of water necessary for her prosperity.[1]

On the other hand, Egypt is certainly entitled to be set free from the burdensome and unjust system of the capitulations from which Turkey has emancipated herself. The extension of the jurisdiction of the Mixed Courts affords an easy method of getting rid of the chaos of jurisdictions without risk of injustice to foreigners, and it is impossible to justify the present restrictions on the legislative competence of Egypt. Moreover, the removal of these obstacles to the due exercise of Egyptian sovereignty would render it possible to place on the Egyptian Government alone full responsibility for the security of foreigners in Egypt. Nothing is more unsatisfactory than the present system under which an indefinite obligation remains with the British Government.

As regards the Sudan, Egypt has already been assured of terms which meet all her needs on the subject of water-supply, and it would no doubt be easy to arrange terms as to immigration and settlement. It is

[1] In July it was announced that in a large measure agreement had been reached on the military issue, the British Government conceding the position that the occupation should be terminated in the sense that British troops should be removed from Cairo and placed in positions directly connected with the defence of the Canal.

clear that the essentials of sovereignty must remain in British hands, and that no substantial concession can be made on this score. The question of the contribution now made from Egyptian revenues may have to be reconsidered, but against this must be set the great saving of cost to Egypt in the matter of her own external defence under a system by which the burden of securing her from external aggression is mainly assumed by the British Government. There is, however, room for accommodation, and, now that the unfortunate attempt of Sir Samuel Hoare to interfere in the question of the restoration of the Constitution has been wholly abandoned, the way should at last be open for a lasting accord to replace the present wholly unsatisfactory position.

(*f*) THE BRITISH MANDATE FOR PALESTINE

35. THE NEW CONSTITUTION FOR PALESTINE

To the Editor of THE SCOTSMAN, *25 March 1936.*

I hardly expected to find at the present moment so strong an advocacy in the House of Commons of the breaking of a solemn obligation, imposed alike by the Covenant of the League of Nations and the mandate for Palestine, to further the gradual development of self-governing institutions in that country. But the most surprising thing of all is the attitude of Mr. Churchill and of Sir Archibald Sinclair. Mr. Churchill has conveniently forgotten that, at the very outset of the new régime, when he was Secretary of State for the Colonies, the British Government deemed it its duty to pass an Order in Council providing for the creation of a Legislative Council in which the Moslems were to have eight elected members as against two for the Jews, and that this project was only abandoned because of Moslem opposition, based on the ground that the Constitution deprived them of the self-government which they deemed to be their right. Sir Archibald Sinclair seems equally to have forgotten that the High Commissioner under whom this scheme was prepared was the ablest Jewish politician of our day, and the best representative of Jewish interests, Sir Herbert Samuel. Neither Mr. Churchill nor his successor, the Duke of Devonshire, admitted for a moment the validity of the argument that the creation of the Legislature would in any way hamper the carrying out of the terms of the mandate in favour of the establishment of a Jewish National Home.

Since 1922 the position has enormously changed in favour of the Jews, who have grown from being about

a tenth to being a quarter of the population, and in the Legislature the seats proposed to be allotted to them number now seven, as opposed to eleven for the Arabs. The Legislature is also so composed as utterly to negative any idea of Arab supremacy therein, and it will, of course, have no control over the executive. Moreover, the terms of the mandate will override all the proceedings of the Legislature. No more modest effort to carry out the plain duty of the British Government can well be imagined. In the adjacent Transjordan territory the Organic Law provides for the existence of a Legislature of sixteen elected to six official members, and no person will seriously suggest that the Arabs of Palestine are inferior in political capacity to those of Transjordan.

The British Government has two clear obligations to honour;[1] it has, as the figures of population prove, worked loyally to establish a Jewish Home; Sir Arthur Wauchope deserves well of the Jewish people, and his considered judgement, which merely repeats that of Sir Herbert Samuel, that the pledge to develop self-government must be honoured, will be regarded as conclusive of the expediency of action at the present time by all those who realize the grave burden of responsibility which he bears, and his unique opportunity of gauging the situation.

Those who support so intemperately extreme Jewish claims must surely forget that they are affording a dangerous ground of justification for the deplorable anti-Jewish movement now disgracing European politics. They are playing directly into the hands of those who contend that Jews and Nazis alike are devoted to the principle of racial superiority and domination,

[1] See Keith, *Letters on Imperial Relations, 1916–1935*, pp. 319, 320.

and deny that equality to which this country still remains true in principle. If the Jewish claim is that a Legislature must not be conceded until Jews are in a majority, it seems to me morally indefensible; if the claim is merely that the British Government must retain full power to carry out the establishment of a National Home, the answer is that under the proposed Constitution this is absolutely secured, for the safeguards therein are even more effective than those which satisfied Sir Herbert Samuel.

36. JEWISH OPPOSITION TO THE NEW CONSTITUTION

To the Editor of THE SCOTSMAN, *27 March 1936.*

Your correspondent's apologia for Jewish opposition to the creation of a Legislative Council in Palestine suffers from the fundamental error that it treats the mandate as intended primarily for the establishment of a Jewish National Home, and only so far as may be compatible therewith for the development of self-governing institutions. If that were so, it would doubtless be convenient to wait until the Jews outnumbered the Arabs before establishing a Council.

But, as your correspondent, like Mr. Churchill and Sir Archibald Sinclair, forgets, the mandate had a double purpose, a fact dictated by the obligations which the British Government had assumed towards the Arabs and the Jewish people. It imposed on the British Government two equal obligations, however illogical the combination might be, and the contemporaneous action of the British Government proves that it deemed itself both bound and competent to give effect simultaneously to both. This decision was not taken without full knowledge. The determination was

shared by Mr. Churchill, who, in the recent debate, rightly stressed his personal acquaintance with the issues between Arabs and Jews, and by Sir Herbert Samuel, the ablest and wisest representative of Jewish interests who could have been found. They knew how bitter was Arab resentment of the establishment of a Jewish Home, yet they felt that they must set up a Council, and give in it eight seats to the Arabs as against two to the Jews. To ignore these facts is idle; to explain them away impossible.

For the British Government now to reinterpret the mandate and to rule that a Council cannot be set up until the Arabs welcome the Jews would be a clear breach of faith. It is quite impossible to accept as valid the argument that the presence of eleven Arabs on a Council of twenty-eight could hamper Jewish immigration, over which the High Commissioner will retain unfettered authority. It is not even proposed to give the Council any authority over the executive, and every consideration has been shown for Jewish interests by according to the Jews seven seats, which is largely in excess of the number to which the strength of the population entitles them. In the case of Transjordan, the promise of the development of self-governing institutions has resulted in the creation of a Legislature with sixteen elected members to six officials; in India, an identic promise has resulted in the grant of responsible government to the provinces; and it is ridiculous to object to the creation of an institution which is deemed necessary by the High Commissioner to enable him to secure legislation best adapted to meet the complex interests of the country. To refuse Sir Arthur Wauchope the aid he desires would be to assume a grave burden of responsibility.

We rejoice at the success which has marked the British fufilment of the obligation to provide a Jewish National Home, but we cannot ignore the fact that we are equally bound to develop self-government now that the Arabs are prepared to co-operate. We have justly refused to allow Arab racial claims to hamper Jewish immigration, but justice equally forbids us to withhold the grant of a Council until it would be controlled by Jews; and those Jews who maintain this claim are exposing themselves to the accusation of demanding recognition of their racial superiority over the Arabs, and being guilty of the fault which has so deplorably disfigured the policy of Germany. Those who seek justice should render it to others, as Sir Herbert Samuel was honourably prepared to do.

37. THE LEAGUE COVENANT AND THE NEW CONSTITUTION

To the Editor of THE SCOTSMAN, *2 April 1936.*

I fear your correspondent's reading of the League Covenant has been extremely superficial. Article 22 of the Covenant runs: 'Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone.' This is the clearest indication possible of the duty of the United Kingdom and France to further the development of self-governing institutions in the mandated areas formerly Turkish; it has been recognized without hesitation by the League Council, and it has borne fruit in the independence of Iraq under a

constitutional Government, in the constitutional régime promoted in Transjordan, and in the Constitutions devised for the Syrian territories under French mandate.

Your correspondent has been equally careless in reading the mandate, which he treats as simply intended to provide for the establishment of a Jewish National Home. On the contrary, the mandate opens with the express statement that the mandate is conferred for the purpose of giving effect to the provisions of Article 22, and only then proceeds to deal with the National Home; and it demands not merely the establishment of the National Home, but the development of self-governing institutions. The two purposes are equally provided for in the Constitution which the British Government, at the prompting of Mr. Churchill and Sir Herbert Samuel, then gave to Palestine. Does your correspondent, to whom the name of Sir Herbert Samuel seems tabu, really imagine that Sir Herbert, who as early as 1915 had presented to the Cabinet a memorandum on the Jewish Home, would have provided for the institution of a Legislative Council with eight Arabs to two Jews if he had not known that the mandate demanded such action? It is folly to ignore essential historical facts. Britain had obligations to the Arabs and to the Jews; her business it was to try to adjust them, and the obligation still remains.

I can hardly believe that your correspondent does not know that the Arab refusal to work the Legislative Council in 1922–3 was really based on racial feeling. The strength of Arab feeling is notorious, but the British Government, as the immigration figures prove, has kept with admirable fidelity its obligations to the Jews. It is deeply to be regretted that some Jews wish it to break its obligations to the Arabs.

The desirability of bringing Jews and Arabs together in a Legislative Council was recognized by the British Government after the outbreak of 1929 had revealed the dangers run by a Government purely official. There has been no haste to bring it about; co-operation of Jews and Arabs on local bodies has been promoted, and the High Commissioner who now desires its introduction has studied Palestine at first hand since 1931. His ideas have the approval of the Colonial Office and of the Council of the League of Nations. No person can honestly pretend that the Council can hinder immigration, which is left under complete control by the High Commissioner. It follows, therefore, that the opposition to the Council is based simply on motives of racial superiority; the wishes of 320,000 Jews[1] are to be preferred to those of 825,000 Arabs, and a Council is to be postponed until Jews have a numerical supremacy. It seems to me that such a claim is morally indefensible, and bears a painful similarity to the doctrines of the Aryan enthusiasts who have so seriously perverted the outlook of modern Germany. But I hope wiser counsels will prevail, and that Jews and Arabs will yet come to realize that in helping each other they will best help themselves.

38. SELF-GOVERNMENT IN PALESTINE

To the Editor of THE SPECTATOR, *2 April 1936.*

It seems to have been completely ignored by those who attack the policy of the Government in regard to the creation of a Legislative Council in Palestine that

[1] This number was given by the Colonial Secretary; it is too low: 400,000 would be more correct. In 1935, 61,854 Jews entered, and in December 6,000 were unemployed. Up to that date 30,000 German Jews had entered.

its action is dictated by a plain obligation imposed by the mandate itself and by the Covenant of the League of Nations. It is quite erroneous to argue the matter as if the mandate provided primarily for the creation of a Jewish National Home, and secondarily for the development of self-governing institutions. In that case no doubt the fact that the Arabs as members of the Council may show hostility to Jewish immigration might be a relevant point to consider in deciding whether or not to set up a Council, even one without power to hamper the work of immigration.

But the position is quite different. The terms of the mandate have a double purpose. They represent an effort to carry out the declaration of 1917 regarding the Jewish Home and the principle of Article 22 of the League Covenant, which contemplates the rendering of assistance to former Turkish territories until they can stand alone. Hence the mandate places on a footing of equality the establishment of the National Home and the development of self-governing institutions, and the mandatory cannot honourably prefer one purpose to the other, but must take the necessary steps to render both possible. No doubt this is hard, but that is no reason for shirking a plain duty.

As to the meaning of the mandate there can be no question, because the double obligation was elaborately provided for in the Order in Council issued in 1922 immediately after the final adjustment of the terms of the mandate. That Order rests on the responsibility of Mr. Churchill, as Secretary of State for the Colonies, and of Sir Herbert Samuel, whose unrivalled authority as High Commissioner renders his participation in the policy decisive. At a time when Arab opinion was even more bitterly opposed to Jewish immigration than it

now is, it was felt by these two statesmen essential to honour the obligation of developing self-governing institutions by setting up a Legislative Council, with eight elected Arabs as against two elected Jews as members. It was only the folly of the Arabs which prevented the scheme taking effect.

The refusal of the Arabs to work the constitution doubtless entitled the British Government to postpone action until it could be assured of co-operation. The High Commissioner now advocates the creation of a Council which the Arabs desire and to which they are clearly entitled. The powers of the Council are so effectively limited that it cannot in the slightest degree hamper the carrying out of the work of immigration. On it there will be only 11 Arabs out of 28 members, of whom 7 will be Jews, though the Jewish population is only 320,000 as against 825,000 Moslems. It is an anomaly of the most remarkable kind that Palestine should so long have been legislated for by the High Commissioner alone. It is instructive to contrast the case of Transjordan, which has a legislature of 16 elected members as against six official members, while the promise of the gradual development of self-governing institutions to India has resulted in the grant of responsible government to the provinces.

Mr. Churchill, who seems to have forgotten what he did in 1922, seeks to exploit the just indignation felt at the treatment of Jews in Germany to prevent the carrying out of a clear obligation to the Arabs of Palestine, and to be prepared to press Mr. Thomas to refuse to accept the advice of the man on the spot, who has the full burden of a delicate and difficult task. But it is immoral to do wrong to Arabs because Germany does wrong to the Jews, and the proper outlet for the natural

sympathy felt with the Jews is the action already taken by the British Government in facilitating an enormous increase in the rate of Jewish immigration, even at the risk of increasing the danger of undermining the economic position of the Arabs. The High Commissioner has shown the utmost readiness to fulfil the mandate to establish a Jewish Home; he cannot in common justice be forbidden to promote, even on a most modest scale, the development of self-governing institutions.

39. THE OPPOSITION TO SELF-GOVERNMENT IN PALESTINE

To the Editor of THE SPECTATOR, *19 April 1936.*

The contentions of your correspondents in your issue of April 17 regarding the Legislative Council of Palestine are based on a complete misinterpretation of the terms of the mandate, and a deliberate ignoring of the history of the Council project.

1. There is no truth in the allegation that the development of self-governing institutions is intended to subserve and safeguard the establishment of the Jewish National Home. The mandate itself is perfectly clear. It is not a mandate, as your correspondents would like it to be, to establish a Jewish National Home, but a mandate to accomplish two objects, which are set out in full in the preamble. The first purpose therein mentioned is to give effect to the Covenant of the League of Nations, Article 22. That Article ignores the Jewish Home but provides that 'Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by

a mandatory until such time as they are able to stand alone'. In the case of every other portion of Turkish territory placed under mandate to Britain and France, that has resulted in the creation of legislatures and of governments in considerable measure autonomous, while Iraq has become an independent State. In the case of Palestine this development must be harmonized with the second object of the mandate, and the result is that the British Government is unable to go farther than to propose to establish a Legislative Council with no control over the executive and no power to pass a single enactment without the assent of the High Commissioner. No more modest effort to fulfil the obligation of Article 22 can well be imagined.

2. Historically the case is overwhelming. To Sir Herbert Samuel belongs the credit of presenting in 1915 to the Cabinet a memorandum on the establishment of a National Home for the Jews in Palestine; in July 1920 he assumed the grave burden of the High Commissionership. In August 1922 was issued the Order in Council to give effect to the mandate, prepared by the British Government in the closest co-operation and conjunction with that high-minded statesman and devoted representative of the Jewish race. The Order in Council provides explicitly for a Legislative Council, in which but two seats would have been given to the Jews as against eight to the Moslem Arabs. Thus at a time when the Jews were a feeble minority, and when promotion of immigration was essential, Sir Herbert Samuel and the British Government were in complete agreement that the terms of the mandate demanded that they should institute a Council with an overwhelming majority of Arab members. The only answer to this available to your correspondents is to repudiate

Sir Herbert Samuel and the British Government, the authorities jointly responsible for the Jewish National Home.

3. When Arab intransigence refused to work the Council, it was not abolished by the Order of 1923, but merely suspended in operation. It stands, therefore, as an essential principle of the Constitution, and when the riots of 1929 showed the defects of the existing system the Colonial Office announced that the Council would, in due course, be constituted, but that in the first place there must be a thorough reorganization of the municipal governments. No one can say that there has been undue haste when in 1936 the Council is still under leisurely discussion.

4. Sir Arthur Wauchope, who desires the institution of the Council, has been on the spot since 1931, and has worked so well that a fresh term of office has been offered and accepted. So far from being lukewarm in support of the National Home, he has accomplished marvels in securing immigration of recent years of almost incredible proportions. When he asks for a Council, to refuse it would be an inexcusable case of overruling the mature judgement of a most competent administrator.

5. Not only are the Jews given substantially more than a proportionate representation on the Council, but the powers of the Council to thwart the purpose of the mandate are simply non-existent, and fear of injury to immigration is fantastic. It is impossible for the Council to restrict the sale of land to Jews unless the High Commissioner and His Majesty's Government approve. Is it really tolerable that so important a territory as Palestine should be denied a Council and placed on a level with Somaliland, St. Helena, and Gibraltar?

Are the wishes of some 825,000 Moslems and 100,000 Christians to be wholly ignored at the bidding of 320,000 Jews? Or is a Council to be withheld until immigration swamps the Arab population and political domination is transferred to the Jews? On reconsideration I hope that general support will be given to the just and proper proposals of a government which has deserved well of the Jewish race and has endeavoured to fulfil its duty to all concerned with impartiality.

40. PALESTINE AND THE JEWS: INJUSTICE TO ARABS

To the Editor of THE SCOTSMAN, *20 May 1936.*

There is nothing more attractive prima facie than to relieve the sufferings of the Jews of Europe by transfer to Palestine. It costs us nothing; it asks for no sacrifice such as would be involved in their settlement in this country, and their competition with our own people. The Arabs ought to welcome what we decline to face; if they do not, we are at least strong enough to reduce them to subjection. In these circumstances it is perhaps useless to point out that there are issues of justice and national honour involved.

The theory that the British Government has uncontrolled authority over the fate of the Arabs, because it rescued them from Turkish tyranny, has nothing but simplicity to commend it. It ignores entirely the fact that the destruction of Turkish dominion was brought about by the co-operation of British forces with the revolting Arabs. To treat allies as conquered subjects is surely dishonourable.

Nor is it less dishonourable to endeavour to explain that the mandate meant that Britain was to govern the

country on the basis of a Crown Colony. The meaning of the mandate was made absolutely clear when the Government which procured it, and Sir Herbert Samuel, to whose initiative the acceptance of the policy of the Jewish Home was largely due, enacted the Constitution of 1922, with its essential provision of a Legislative Council as the foundation of the structure of self-government. If Jews wish to repudiate the action of Sir Herbert Samuel, they are at liberty to do so, but the value of such repudiation will be negligible.

The British Government is bound by its double undertakings; your report of the reception of the decision to appoint a Royal Commission by Jews and Arabs alike shows that neither party realizes that justice is due to the other. The Arabs persist in their belief that the mandate is a breach of the undertakings given to them to secure their co-operation against the Turks; the Jews object to anything which seems to negative or affect their view of the extent of their right to immigrate. The course for the British Government is clear. Its duty is to secure authoritative information on the extent to which immigration into Palestine on the vastly increased scale now believed to be in progress is compatible with the maintenance of the Arab population on the land. It is not possible for it to hold that Jews are better settlers than Arabs, and that the reduction of the latter to a landless proletariat or their expulsion from the country is justifiable on the principles of the utilitarian philosophy. It is a matter of dispute whether due legislation has been passed to secure Arab interests, and an impartial investigation ought to be welcomed as the basis for a just policy. Arabs and Jews alike can only injure their case by declining to permit investigation.

41. THE DOUBLE MANDATE IN PALESTINE

To the Editor of THE SCOTSMAN, *22 May 1936.*

Your correspondence to-day illustrates the impossibility of expecting either Jews or Arabs to understand the point of view of the other race. But we who are not bound by religious convictions or affected by racial feeling should try to do justice to both.

(1) It is unjust to expect the Arabs to regard the mandate as morally binding on them. It was as a matter of fact imposed on them by the overwhelming power of Britain which secured League assent, and it is maintained by force. The Arabs are perfectly entitled to say that they have, though rather allies than enemies, been subjected to harsher treatment than the people of any conquered colony.

(2) The measure of advantage and profit to the native population through immigration may be gathered from the conclusive report of Sir J. H. Simpson, who points out that land purchased by the Jewish National Fund is extra-territorialized, and ceases to be land from which the Arab can gain any advantage whether now or at any time in the future; he can neither lease nor purchase it, and by the stringent provision of the leases of the Fund he is deprived for ever from employment on the land.[1] It is now a recognized principle of British colonial government that a primary duty is to preserve the land for its cultivators, and to prevent them, through voluntary sale or otherwise, from being reduced to a landless proletariat. Arabs must be excused if they see in this policy a deliberate attempt to oust them from Palestine.

[1] In 1935 alone Jews acquired from non-Jews 72,905 dunums of land at a cost of £(P)1,699,121.

(3) The Arabs have committed the grave political error of not realizing that they are subject to superior force, and that they should accept as inevitable their subjection, and endeavour to protect as far as possible their interests by relying on the protective clauses of the mandate. Had they worked the Constitution, justly approved by Sir Herbert Samuel, they might easily have secured that Jewish immigration should be prudently regulated, and progress made towards the achievement of a Jewish National Home without serious injury to the Arab race. The hostility shown by the Jews to the desire of Sir A. Wauchope to revive the project of a Legislative Council is indefensible, and doubtless is in some measure responsible for the present outbreak of unrest.

(4) As I have repeatedly pointed out, the British Government is definitely bound to further the establishment of a National Home for Jews in Palestine, and the progress which it has made to such an end is most striking, and many Jews have admitted it. But the Jewish case is gravely prejudiced by the over-statement of the claim. The Jewish Press in Palestine on May 17 stated 'that the Jewish people will have nothing to do with a Royal Commission to discuss their indisputable right to enter the country'. That implies a wholly impossible claim. The British Government is under the clearest obligation to promote immigration in so far as it is consistent with the welfare of the existing population, and if it is true, as is stated on Jewish authority, that the Jewish population has increased from 50,000 in 1919 to 400,000 at the present time, the need for careful examination of the rate of immigration seems palpable.

(5) The British Government has to reconcile two duties which can be reconciled, if at all, only by the

utmost tact. It is faced by Arab and Jewish intransigence in Palestine, and subjected to strenuous Jewish propaganda in Britain, greatly strengthened by the natural desire to find a refuge for the victims of persecution in Europe. It is easy to yield to popular clamour and to adopt a régime of suppression of the Arabs.[1] But is this consistent with undertaking a sacred trust of civilization, with justice, with national honour?

42. THE DOUBLE MANDATE IN PALESTINE: THE ARAB CASE

To the Editor of THE SCOTSMAN, *25 May 1936.*

The importance of the points involved is such that I shall be grateful if you will permit me to make a final contribution to the issue of Palestine.

(1) As your Jewish correspondent adduces, in support of his theory of the Zionist convictions of the British people, Lord Balfour's speech in the House of Lords on June 21, 1922, it is right to remind him that the House, after hearing that speech, by 60 votes to 29 held 'that the mandate for Palestine in its present form is unacceptable to this House, because it directly violates the pledges made by His Majesty's Government to the people of Palestine in the Declaration of October 1915, and again in the Declaration of November 1918, and is as at present framed opposed to the sentiments and wishes of the great majority of the people of Palestine'. In the Commons on July 4 the Government could not risk leaving the question to a free vote, and had to demand a vote of confidence, which was accorded, after the Colonial Secretary had definitely stated that the

[1] The policy of refusing to appoint a Royal Commission during Arab unrest is reasonable, but the refusal to state the terms of the reference to it is a grave error, giving rise to suspicions of British good faith.

civil and religious rights of the Arabs would be effectively safeguarded, and that they would not be turned out to make room for new-comers. The new Government on June 27, 1923, declared unequivocally that it felt itself under the obligation to establish by successive steps various degrees of self-government, leading up to responsible government, the first step being the creation of a Legislative Council, which was an essential feature of the policy of its predecessor.

(2) No religious conviction, in my opinion, excuses injustice, and I am not prepared to deny that the decision to establish a National Home for the Jews in Palestine may fairly be denounced by the Arabs as one of the many injustices induced by war mentality. But, when the demand is made by Arabs that the terms of the mandate providing for the encouragement of the establishment of a Jewish Home should be abrogated, it seems to me that they ask us to commit a second injustice towards those Jews who acted on the faith of the mandate. We are bound to give effect to both obligations, and the deliberate attempt to minimize our duty to the Arabs seems to be profoundly unwise.

(3) That we have performed our duty as regards the Jews is proved beyond question by the increase of Jews from 50,000 in 1919 to 400,000 to-day, as asserted by Jewish authority. That we have performed our duty to the Arabs is *prima facie* disproved by the fact that the Legislative Council, which was to be merely the first step towards responsible government, has not yet been brought into being, and that the whole weight of Jewish influence in this country has been mobilized to prevent it coming into being. It appears to me that this attitude is gravely unjust, and that the blood that is now being shed in Palestine may in part be due to

the refusal of the Jews to allow the Arabs this normal means of ventilating their demands. As regards the land question, against the interested assurances of Zionists, who naturally regard Palestine as the home of the Jews, must be set the weighty warning of a completely disinterested expert such as Sir J. H. Simpson, to which no serious answer has yet been given. Instead, the refusal of the whole of the Jewish Press of Palestine to agree to the issue of immigration being considered by a Royal Commission leaves on my mind, and probably on those of most impartial people, the impression that they dare not face impartial investigation of the facts. I gladly recognize that your correspondent dissociates himself from the Jews of Palestine on this score, but he must remember that the Arabs there cannot fail to draw from the Jewish attitude the conviction that the Jews are determined to oust them from their lands.

(4) The present Government is clearly too much weakened by recent events[1] to be able to adopt any final policy without full inquiry, and on that account a Royal Commission of able men may be welcomed. But a definite policy must not be long delayed, and the history of British relations with Ireland should warn us against reliance on the delusive assurance that the vital issues can be settled by mere repression of a people which has clearly definite grievances to be redressed.

[1] i.e. the failure of its Ethiopian policy and the budget disclosure issue, which resulted in the resignation of the Colonial Secretary, Mr. J. H. Thomas (Cmd. 5184, pp. 17, 23; House of Commons Debates, June 11, 1936).

(*g*) THE INDIAN REFORMS

43. DOMINION STATUS AND INDIA

THE NEAR EAST AND INDIA, *14 February 1935*.

The term 'Dominions' as the collective appellation of the self-governing Colonies was coined by the Colonial Conference of 1907, but its implications only became distinct to the public in 1911, when the proceedings of the Imperial Conference of that year made it clear that those territories which enjoyed self-government had attained complete authority in all matters of internal concern, and were thus in this regard on a footing of equality with the United Kingdom. But the Dominions then still refrained from extending their claim of autonomy to the sphere of foreign relations, and remained content to leave to the British Government the conduct of foreign policy, so long as they were consulted on issues affecting their special interests. The Great War, however, effected a complete change in their outlook. As they found it necessary to throw their whole energies into the conflict, they claimed at the conclusion of hostilities the right to take part on a footing of equality with the lesser Allied Powers in the determination of the terms of peace. Their demand was conceded, and their international position definitely recognized in the mode of signature and ratification of the Treaties of Peace, and above all in the distinct membership of the League of Nations, which was accorded to them. At the same time, the grant to the British Empire as a whole of a permanent seat on the League Council was intended to serve as a definite indication that, while the Dominions were within the League distinct members, eligible for election as temporary members of the League Council, nevertheless they were held together

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by their membership of that lesser League, the British Empire.

AN IMPORTANT DECISION

At this juncture the destiny of India was indissolubly linked with that of the Dominions by the decision of the British Government to obtain for India membership of the League of Nations on the same footing as the Dominions. The step was of the highest importance, for, until it was taken, it was possible to argue that it was not the intention of the British Government to assimilate the status of India to that of the Dominions. The Declaration of August 20, 1917, spoke only of 'the progressive realization of responsible government in India as part of the British Empire', and imposed no obligation to take the vital resolution to grant international status to India, and that, too, at a time when the smallest of the Dominions, Newfoundland, was restricted to internal autonomy. By this action it was made clear beyond dispute that India's ultimate goal was that status which had been attained by the great Dominions, and that India would share in the extension of that status in the course of its evolution.

COMPLETE EQUALITY IN STATUS

It was inevitable that membership of the League, which involved complete independence of the British Government in all League proceedings, should raise questions of the position of the Dominions in other international matters, and as early as 1920 the right of the Dominions to distinct diplomatic representation at foreign Courts was conceded to Canada, although it was not at once acted upon. The grant, however, of Dominion Status to the Irish Free State greatly

accelerated the evolution of independence, for the Free State, which had aimed at a republican Constitution, was anxious to press to the utmost the conception of Dominion Status, and aid in this endeavour was forthcoming from the Union of South Africa, whose Prime Minister at the Imperial Conference of 1926 sought recognition of the complete sovereignty of the Dominions. The resolution then reached was a compromise, but it asserted the complete equality in status of the self-governing parts of the British Commonwealth of Nations, although united by a common allegiance to the Crown and freely associated as members of the Commonwealth. Further definition of the status of equality was left to a future Conference, and the Conference of 1930 set its approval on the legislation which was passed in 1931 as the Statute of Westminster. As regards the conduct of foreign affairs the Conference of 1926 asserted definitively the complete autonomy of each part of the Commonwealth, although it enjoined on each the duty of informing other parts of its policy. Legislation on this head was not proposed, for the conduct of foreign affairs has always rested on the royal prerogative, and it suffices to agree in what manner that prerogative should be exercised, namely, for each part of the Commonwealth on the advice of the Government of that part. Each part was left free to use the machinery of the British Foreign Office and diplomatic service or to deal direct with the King and establish its own legations.

THE STATUTE OF WESTMINSTER

The effect of the Conference resolutions has been formally declared by the Parliament of the Union of South Africa to recognize the sovereign independence of the several parts of the Commonwealth. The Statute

of Westminster has, in fact, rendered it open for the Dominions to remove the Royal disallowance of legislation, and the Union has taken this step; further, each Dominion can select and remove its own Governor-General. The Union further claims that the Crown is divisible; that each Dominion has the right to remain neutral in a British war and to secede at pleasure, and the Irish Free State asserts a like claim. The British Government has not questioned the Union claim; it has suggested doubt as to that of the Free State by reason of the special treaty relation between the United Kingdom and the Free State. But the claim of the right of secession at will runs counter to the preamble of the Statute of Westminster, which contemplates any change in the succession to the Crown as to be accomplished only by legislation in all parts of the Commonwealth; and it may fairly be said that Lord Irwin and the British Government in 1929 cannot have intended the assurance of Dominion Status as the ultimate goal of Indian reform to include the right of secession. Lord Willingdon, in 1933, only reiterated the assurance of his predecessors, and the Government at the present time is, doubtless, justified in holding that it is entitled to claim that the Dominion Status of India is subject to continued membership of the British Empire. Nor should it be forgotten that the Dominion of Canada, the Commonwealth of Australia, and New Zealand make no claim to the right of secession.

44. THE INDIAN CIVIL SERVICE

To the Editor of THE SCOTSMAN, *28 April 1936.*

The intimation of changes in the mode of recruitment for the Indian Civil Service involves a definite

declaration that, despite the grant of responsible government to the provinces, the proportion of recruitment is to be maintained on the basis of equality between European and Indian candidates. This decision is obviously very difficult to explain or defend, and it may safely be assumed that it will be very unsatisfactory to those elements in India which have been willing to treat the reform scheme as definitely intended to increase the share of Indians in their own government. Prudence would have dictated abstention from any such declaration, leaving the issue to be considered in the light of the working of the reforms.

Secondly, it should be obvious to every one who has studied Indian affairs that the success of the Indian Civil Service has been due to the competitive system securing an unusually high class of recruits. The deliberate taking in of men of admittedly inferior capacity at a time when the position of Indian Civil Servants is one of peculiar delicacy and difficulty is most unwise, and will result in weakening the respect felt for the Service. It will, of course, diminish the possibility of attracting men of high qualifications, and accelerate the decline in the quality of the Service which is already in marked progress. What we need to send to India are picked men,[1] not those incapable of reaching a reasonable standard in the Civil Service examination.

Thirdly, the mode of treatment of Indian candidates is difficult to defend. The theory in the past was that two years' residence as probationers in England was a valuable initiation for selected candidates from India into the system of political government which is being set up in India, and into those values which are

[1] An improvement in quantity and quality of candidates appeared in 1936, suggesting that the new system was premature.

regarded as the most important contribution we have to offer to the progress of enlightened ideas in India. The reduction of this period to one year seems to me to rob it of most of its value, and to render it doubtful whether any useful purpose is served by taking away these youths from the country in which their life-work lies, and placing them for a brief period in alien surroundings to which it is not worth while trying to assimilate themselves.

Fourthly, if we believe in the value of training in England, why should the number of places open for competition by Honours graduates be limited? Surely these are the men whom we should wish to encourage—men of high qualifications who have been at least three years in Britain, and thus must have assimilated British culture in a manner quite different from the smattering of our ideas which can be derived from less than a year's stay. This of all the anomalies seems to me the least defensible.

(*h*) THE WEST AFRICAN PROTECTORATES

45. CHANGE FROM PROTECTORATE TO COLONIAL STATUS

THE WEST AFRICAN REVIEW, *December 1935*.

The question of international control of the sources of supply of raw materials has raised once more the often discussed issue of the policy of transforming the existing British protectorates into colonies. The importance of the issue has been increased by the discussion which took place over the projected transfer of a strip of British Somaliland to Ethiopia in order to facilitate the conclusion between that country and Italy of an accord which might avert the threat of war.[1] Though the refusal of Italy to consider any terms just to Ethiopia brought, for the time being, this project to an end, there were ominous signs that the British Government regarded the position of protected territory as very different from that of British territory proper. It was, for instance, apparently held by the Secretary of State for the Colonies that the Government was not bound by the precedents of surrenders of colonial territory as in the case of Heligoland to obtain the formal approval by parliamentary legislation of the transfer. It seems indeed to have been held that it was not requisite to obtain the personal assent of the King in advance to the proposal to withdraw his protection from the population of the area which it was suggested might be transferred. This is unquestionably a disquieting position and strengthens the arguments in favour of change of status where that can be carried out with the goodwill of the areas affected.

There is a consideration in favour of alteration of

[1] See ii, no. 1, *post*.

status which cannot wisely be ignored. The rule of law which prevails in the colonies is not wholly applicable to the protectorates. No doubt the issue seldom arises in practice in any inconvenient form, but the decision of the Privy Council in 1926 in the case of *Sobhuza II* v. *Miller and the Swaziland Corporation*[1] is a very plain intimation that actions of the Crown on protected territory cannot be made the subject of proceedings in the Courts if the Crown should decide to meet any suit with the plea of 'Act of State'. It is easy enough to imagine circumstances in which this power might be used to the disadvantage of protected persons, and this possibility would be removed by the declaration of colonial status.

The problem of change of status, however, is not without difficulties. The Governments of British West African territories are plainly without power to act in the matter; they can only advise the Crown through the Secretary of State for the Colonies as to the desirability and acceptability to those concerned of the change. The power of the Crown to annex territory is unlimited by constitutional law. It rests within its unfettered discretion to decide its course of action, and that action could not be questioned in any British court. Nor could annexation be questioned by any foreign power under international law. There is no treaty in force which limits British action in this regard, nor is there any general principle of international law to prevent action. For international purposes foreign countries regard their own and treat British protectorates as assimilated to possessions, and the change in status would pass without international comment so far as the legality

[1] [1926] A.C. 518. Cf. Keith, *The Governments of the British Empire*, p. 246.

of the transfer was concerned. The formal mode of action would be simple. It would not be necessary to consult Parliament in any way. The Crown would be advised to issue Letters Patent under the Great Seal of the Realm annexing the protectorates to the dominions of the Crown. The same instruments or supplementary instruments would deal with their government, either continuing the existing systems or making any changes deemed desirable as a consequence of the altered status of the protected areas.

The real difficulty which presents itself is not one of power, but of the constitutional principles on which it should be exercised. Annexation of territory may be justified under constitutional usage by two rather different sets of circumstances. If in a territory over which by cession or conquest there has been established a protectorate there are found considerable bodies of European settlers, the condition is normally present for the transfer of the protectorate to the status of a colony. Thus the creation of the colony of Kenya was justified in the Order in Council of June 11, 1920, on the express ground that British subjects had settled in large numbers in the territory, and it was, therefore, annexed with a view to further development and more convenient administration. In the same way in the case of Southern Rhodesia the decision by Order in Council of July 30, 1923, to annex the territory was based on the fact that a very considerable European population had grown up and had shown itself to be qualified for self-government, subject to certain conditions necessary to safeguard the interests of the native population and the British South Africa Company. In neither of these cases does the annexation appear to have been based in any degree on the wishes of the native inhabitants of the

territories. In both cases it was presumably felt that the native people had by cession or conquest fallen so completely under the control of the Crown that they would be certain to welcome the action which conferred on them the status of British subjects in the fullest degree.

On the other hand, where European settlement is out of the question annexation has taken place on the representations of the native people themselves through their chiefs or other representatives. Of this there is a comparatively recent example in the case of the Gilbert and Ellice Islands, which were annexed by Order in Council of November 10, 1915. In their case the orderly character of the native Government and the loyalty of the people were suitably rewarded by removing the Islands from the status of a protectorate, which is still that of the less civilized Solomon Islands, and conferring on them the position of British subjects.

For West Africa, of course, the case of the Gilbert and Ellice Islands affords the due precedent, and by constitutional usage the Crown would unquestionably be fully entitled to annex the protectorates if that were acceptable to the rulers and their people. It is difficult to say that constitutional usage would justify annexation in the absence of such approval. No doubt the Crown might act despite dissent if there were any pressing grounds of foreign policy to motive action. But, in the absence of such conditions, it is clear that the governing consideration must be the wishes of the people, expressed in the appropriate manner under their local usages. It is primarily for them to consider maturely the advantages of the change of status, and to intimate their desires to the heads of the governments with which they are in relations. Should there

be clearly a general desire for annexation, it cannot be supposed that the Crown would hesitate to act, or to override the objections of a dissentient minority if it were not of substantial proportions. On the other hand, it is impossible to suppose that the Crown would act without being satisfied that the step of annexation would be generally approved.

It has indeed been suggested that annexation would be wounding to the dignity of the Emirs of Northern Nigeria and the Yoruba chieftains of the south, and that they would be grieved to find themselves transferred into the status of British subjects. If this should prove to be the case, the Crown would hardly wish to act. But certainly such a feeling would be most irrational. There is no advantage which any of these chiefs would lose if he became a British subject instead of merely a British-protected person, and his status under the new régime would be more assured than under the old. There are no rights that he would surrender, for the time is past when it was possible to claim that protectorate status permitted the maintenance of forms of domestic slavery which would be forbidden on colonial soil.

It has been objected, however, that the protectorate system permits of the maintenance of native government to a measure impossible under the colonial régime. But there is certainly no warrant for this assertion. There is nothing whatever in law to prevent the maintenance without change of the present system of indirect government under colonial status, and the Crown would remain at liberty to preserve whatever it thought sound in native institutions, as it preserves them to-day in Basutoland, which is a colony, no less than in the Bechuanaland Protectorate. If it is said

that as British subjects the native people would be entitled to expect a higher standard of administration than as protected subjects, it may fairly be replied that whatever their status they are entitled to the best administration which the Crown can devise, and that no enlightened ruler should hesitate on this score to work for the early attainment of full British nationality.

II

INTERNATIONAL RELATIONS

1. THE OFFER TO ABYSSINIA

To the Editor of THE SCOTSMAN, *2 July 1935.*

It is characteristic of the dangerous position created by the intransigence of Signor Mussolini in regard to Abyssinia that we have to go back to war conditions for a precedent of light-hearted bargaining as to territory under the control of the Crown. It will be remembered that, while Cyprus was annexed on the outbreak of war, the British Government took the responsibility, without consulting Parliament, of offering to cede it to Greece if that Power would intervene with decisive force on behalf of the Allied cause in a critical moment. Apart from the excuse of war necessity, the action of the Government could be justified to some extent by the fact that the population of the island is mainly Greek, and that, as events since have demonstrated, there is a strong feeling there in favour of inclusion in the Greek Kingdom. But, even so, the step, like the promise which ultimately resulted in the cession of Jubaland to Italy, was a very strong one, and the Government was probably not very deeply disappointed when the offer definitely lapsed on the refusal of Greece to accept the condition imposed.

In the case of the suggested surrender of an area of Somaliland, it is fair to note that British territory proper is not involved, for Somaliland is not formally annexed, and it has always been felt simpler to waive claims over protected territory than to cede British territory. But the principle involved is essentially the same. British protection in many cases is practically equivalent to British sovereignty, and the sanction of Parliament should be accorded to its withdrawal. Moreover, the

modern rule,[1] as seen in the case of the Dindings last year, requires that any agreement to transfer should be made expressly subject to the approval of Parliament. We must assume that it was contemplated, if the matter had gone further, to bring out this point distinctly, and that it was not intended to claim that a transfer of territory under British protection could be made without the sanction of the legislature. The powers of the Executive are sufficiently wide without encouraging it to assume further authority in the belief that it can always coerce the majority in the House of Commons to homologate its action.

2. THE CESSION OF BRITISH TERRITORY

To the Editor of THE MORNING POST, *6 July 1935.*

I trust that efforts will be made in the House of Commons to secure from the Colonial Secretary an elucidation of his apparent assertion of change in regard to the necessity of obtaining the prior assent of the King to any project of surrender of British territory, or, as in the case of Somaliland, of relinquishment of rights and duties of protection.

On the face of matters Mr. MacDonald seems to have confused two quite different things. There has unquestionably been a complete change of view regarding the relation of Parliament to the exercise of the prerogative of cession of territory, which may conveniently be dated from the Heligoland precedent in 1890. It is now recognized that cession should be authorized by Parliament and not based on the prerogative alone. But that has nothing to do with the position of the Ministry and the Crown. It remains essential that, before any diminu-

[1] See Keith, *Governments of the British Empire*, pp. viii, ix, 114.

tion of His Majesty's territories or withdrawal of his protection takes place His Majesty should be informed of the project and his assent obtained. No doubt His Majesty will accept the deliberate advice of his Ministers on a vital issue, but they would be entirely lacking in their duty to him if they failed to bring the matter before him in the first instance. The relevant precedent is the offer of Cyprus to Greece as the price of assistance in the crisis of the Great War. Are we to suppose that this was made without prior consultation with His Majesty?

3. 'SANCTIONS'

MANCHESTER GUARDIAN, *2 October 1935*.

PAST EXAMPLES

In the earliest organized communities of which we have records we find in full force rules recognized by the members of the society as binding in their relations with one another and the community and enforced by penalties. But such penalties were not necessarily physical; early man did not distinguish in the modern way between the material and the immaterial. As the term '*sanction*' *reminds us, a most potent penalty was to* declare the offender 'sacer', devoted to the vengeance of the gods whom breach of the social order offended. It was from this early usage that Rome developed the idea of sanctioning a law by a penalty generally, and not merely by dedicating to the angry gods the life of the offender. Naturally with the growth of reflection and of complexity of social relations there appears a consciousness of the possible conflict of the actual law of the State and the higher divine law, to which Greece gave classical expression in the 'Antigone' of Sophocles and the 'Apology' of Plato. This in its turn develops

into the philosophical discussion of the character and foundation of law, and efforts to trace it back to the fundamental intellectual or emotional character of man, which thus is the true sanction to which we must ascribe the observance of law.

AUSTIN'S THEORY

On the Continent a wide view of the sense of law has always prevailed, in accordance with the historical and philosophical development of thought. But in England Austin's analysis of law broke with tradition and emphasized as essential the aspects of (1) the laying down of rules by a superior, (2) the imposition by that authority of penalties for breach, and (3) their infliction by duly constituted courts. Convenient for certain purposes of legal definition, Austin's theory has long been recognized as without historical value; we cannot deny that much early law developed without conscious law-making by any superior or his imposition of penalties, and in early stages of legal development the penalty was inflicted rather by the individual or family than by the community, or was left to the divine power. But with our modern ideas, which restrict penalty to something physical, we can recognize the existence of laws which are binding, but which cannot be enforced by any legal procedure through the courts.

This is especially common in the sphere of constitutional law in the British Dominions, which have reduced to statutory form much that in England is left to custom and convention; it would be difficult to devise any scheme by which the holding of the annual meetings of Parliament demanded by Dominion Constitutions could be enforced by the courts or failure to do so penalized. If in such case we seek a penalty it must lie in public

disapproval, the modern expression of what to early peoples was divine displeasure; in this sense we may say: 'The voice of the people is the voice of God.'

Bearing these facts in mind, it is easy to understand the idea of Austin's still prevalent in England that international law lacks the true character of law, for there is no supreme law-giver to enact law, provide sanctions, and enforce them. Historically, however, the idea of international law was a perfectly natural development from municipal law. Treaties, the essential feature of international law, were not left without sanction, and that in the most literal sense. Our earliest records of the Indo-European peoples show them confirming their treaties by solemn oaths, thus providing them with the strongest assurance of validity which they could devise. It was precisely on the same principle that the English kings swore on accession in the terms of the coronation oath and bound themselves by oath when they renewed the issues of the Great Charter. The oath confirmed the Treaty of Verdun which divided in 843 the Carlovingian Empire; it figured still in a treaty between France and Switzerland in 1777. Its disappearance was due in part to the fact that the Pope was deemed competent to dispense the parties from the effects of their oath and in part to the growing recognition of the distinction between the State and its sovereign head.

GUARANTEES

International law, therefore, has known from the first sanctions, which in course of time became more and more secular. Thus by the Treaty of Orleans in 1514 the vassals of Louis XII and Henry VIII undertook to compel their sovereigns to keep faith. As late as 1748 two British hostages were given to ensure to France the

faithful execution of the obligation to return Cape Breton and the territories captured in India during the recent war. France owes Corsica to its having been pledged as a guarantee for the payment of loans. By a curious anticipation of the registration clause of the Covenant of the League of Nations we find that the Treaty of the Pyrenees of 1659 provides for the registration of that compact with all the French Parliaments and the Court of Accounts. In modern times we have the system of the guarantee of treaty stipulations by interested Powers, as when in 1856 England, Austria, and France guaranteed the execution of the Treaty of Paris as regards the independence and integrity of the Ottoman Empire, and in the Locarno Pact. Occupation of territory by way of guarantee was enforced against France in 1871 and against Germany in 1919, and control of sources of revenue has not rarely been conceded to secure execution of financial agreements.

SYSTEM OF RULES

But in addition to these special sanctions, international law, like constitutional law, has always rested largely on the force of public opinion and on the possibility that it might be enforced by war. It is an academic speculation whether war should be deemed, properly speaking, a sanction, though Article 16 of the Covenant may be adduced to support the view that it is. But the essential point is that historically international law has developed as a system of rules agreed to formally or tacitly by the Great Powers, whose breach involved some form of sanction, even if only moral. This is the reason why, at The Hague Conference of 1907, it was laid down that a belligerent who violated the regulations for the conduct of war on land should be held

liable to make compensation for the unlawful acts of its armed forces. In drafting the abortive Declaration of London, 1909, care was taken to provide as the sanction for failure to notify a blockade its invalidity as against neutral Powers.

In these circumstances it was inevitable that at Paris the minds of those engaged in the preparation of the League Covenant should have turned to the necessity of providing sanctions to give effect to what was intended to be a great act of international legislation, involving the creation of an International Court with power authoritatively to interpret international law. What was novel was the form of sanction adopted, after the rejection of the French suggestion of a standing international force[1] to secure respect for law. That economic sanctions should be preferred in the first instance was largely due to the enormous importance of the part played by economic conditions in the late war, in which the collapse of German resistance was attributed in large measure to the ever-increasing pressure of the Allied blockade. But the general principle of the provision of sanctions was the logical outcome of the development of international law in modern Europe.

4. PARLIAMENT AND THE CRISIS

To the Editor of THE SCOTSMAN, *8 October 1935.*

The summoning of Parliament is clearly necessary at a very early date if the Government of the United Kingdom is to give effect to its clear obligations under Article 16 of the League Covenant. It is now undisputed that Italy has violated her obligations under

[1] This idea with special reference to an international air force forms the basis of the movement known as the New Commonwealth sponsored by Lord Davies and now supported by Mr. W. Churchill.

the Covenant, and has thus put herself in the position of being deemed to have committed an act of war against this country. If this meant that a state of war had been created by Italian action, then all economic and other relations between persons resident in the British Dominions and Italy would, *ipso facto*, be illegal. But that doubtless is not the result of Italy's action. The United Kingdom could presumably regard Italy as being at war, and a formal declaration to this effect would sever relations, but no British Government would take such a step if at all avoidable. In order, however, to apply the severance of trade or financial relations and the prohibition of intercourse between British and Italian nationals, an Act of Parliament is essential. The undertaking of the Covenant is for immediate action, and however freely that obligation may be interpreted, Parliament will have as early as possible to give authority to the Crown by Order in Council to regulate relations with Italy.[1]

As reference has been made to the various attempts to diminish the rigidity of the obligations of the Covenant, it is worth while remembering that it was the Government of France which, through M. Loucheur, at the sixth Assembly of the League, announced refusal of acceptance of any of the amendments voted previously, on the ground that they tended to diminish the rigidity of the economic and financial sanctions provided against an aggressor. Comment is needless.

5. TREATY OF PEACE ACT AND SANCTIONS

To the Editor of THE SCOTSMAN, *30 October 1935.*

Inter arma silent leges, and I suppose our domestic conflict may be held to justify the passing over by

[1] See no. 5, *post*.

public opinion of the remarkable character of the Treaty of Peace (Covenant of the League of Nations) Order, 1935. But the importance of restricting arbitrary action by the Executive and the risk of setting a dangerous precedent may justify calling attention to the nature of that measure.

(1) The action taken is based on the Treaty of Peace Act, 1919. That measure was passed to enable the Crown to give effect to the Treaty of Versailles, 1919, and it appears to me to be unsound in principle to suppose that the power then given is sufficient to authorize the Crown to carry out at any future time any action which it may deem proper to make effective the Covenant of the League of Nations. The procedure adopted seems to be open to every objection that can be adduced against delegated legislative power. I presume that it may be welcomed by the Labour Party as an excellent precedent for the procedure of socialization of banking and industry by Order in Council proposed by Sir S. Cripps, but I should have expected that its danger would have been recognized by Conservative and Liberal supporters of the Constitution.

(2) However open to objection on constitutional grounds the Order may be, it is possible that it may be upheld by the Courts as legal; the issue is open to grave doubt. But on one point the Order goes definitely beyond the League Covenant. Article 16 authorizes the termination of all financial relations between British nationals and Italian nationals, but the Order makes it a serious criminal offence for any British subject to lend money to another British subject resident on Italian territory. It treats, therefore, Italy as if war had been declared between this country and Italy, which is not the case, and a British subject

resident in Italy on the footing of an enemy subject. This would have been legitimate if the amendment to the Covenant proposed in 1924 had ever been accepted, but it is not operative, and to ignore that fact seems inexcusable.

It may be hoped that, if the matter is not earlier challenged in the Courts, Parliament on reassembling will insist on being asked to give by legislation a properly defined authority to the Executive to enforce sanctions against Italy, negativing the extravagant claims made for the Treaty of Peace Act, 1919.

6. THE COVENANT AND SANCTIONS

To the Editor of THE SPECTATOR, *17 December 1935.*

Surely the effort of Mr. Eden to hold that the resolution of the League Assembly of 1921 has an equal claim with the terms of Article 16 of the Covenant to govern the application of sanctions is one open to the most serious exception. It may suit France now to stress that resolution, but it must be remembered that it was France which, through M. Loucheur in September 1925, informed the League that France would not ratify any of the suggested amendments of the Covenant which diminished the rigidity of financial and economic sanctions in the case of aggression. When it is remembered that France thus definitely refused to accept as an amendment the very clauses on which reliance must be placed to justify the postponement of sanctions, her position appears in a very painful light. The only aggression, we must assume, which is to invoke the terms of the Covenant is that perpetrated at the expense of France.

The resolution, in any case, in no way permits in-

definite suspension of such a sanction as the oil sanction. It merely provides for procedure, and requires the Council, when it has determined the fact of breach of the Covenant, to notify members of the League of the date recommended for the application of economic pressure. There is no general power of postponement; that is specifically made clear by the express authority given to the Council to postpone for a specified period the operation of sanctions in the case of particular members of the League, when it is satisfied that such postponement will facilitate the carrying out of the object of sanctions or is necessary to minimize loss to the members concerned. It is really impossible to treat this resolution, which is wholly without power to alter the obligation of the Covenant, as justifying indefinite failure to give effect to a plain obligation. It would be far wiser simply to admit that the Covenant cannot be given effect, which would mean that all our treaties involving sanctions, the Locarno Pact in particular,[1] have become impossible of execution through change of circumstance, especially the loss of members from the League.

7. THE PEACE PROPOSALS

To the Editor of THE SCOTSMAN, *17 December 1935.*

It is easy to sympathize with the difficulties in which the Government has involved itself by its departure from the spirit of the League Covenant, but I think it is right to protest against the assertion of Mr. Eden that the application of sanctions by the League is governed not only by Article 16 of the Covenant, but by

[1] The German denunciation of March 7, 1936, was the logical outcome of the British, French, and Belgian breach of faith.

the resolution of the Assembly passed in 1921. Mr. Eden is perfectly well aware that the resolution of the Assembly has no validity to modify in any manner the Covenant of the League, and that none of the attempts made to modify Article 16 has been ratified. It is most pertinent to remember that in September 1925 the French Government, through M. Loucheur, intimated that it could not ratify any amendment tending to diminish the rigidity of financial and economic sanctions in the case of aggression. We now know that the only case of aggression which concerns France is aggression against herself.

Apart, however, from this fact, it is important to remember that the Assembly resolution of 1921 is of the most limited scope, and merely recommends provisionally for the guidance of the members of the League certain principles. It makes no attempt, and admittedly could make no attempt, to modify the obligations of Article 16. It merely advises that the date at which economic sanctions should take place should be notified by the Council after it has determined, as it has done in this case, the fact of a breach of the Covenant of the League, and it allows the Council to postpone for a definite period the date of action for certain members where it considers that such postponement will help to achieve the end aimed at, or is necessary to diminish loss to those Powers. It is perfectly clear that a general postponement of the oil sanction is not within the intention of the resolution, and that to treat the resolution as authorizing virtually the neglect of the essence of Article 16 of the Covenant is contrary to good faith.

8. THE POLICY OF SANCTIONS

To the Editor of THE SCOTSMAN, *27 December 1935.*

The sincerity and brilliance of Professor Sarolea's attack on sanctions render it necessary to point out the fundamental misconceptions on which his argument is based.

(1) There is no basis for the accusation that the League of Nations is the first and persistent breaker of the Covenant. Article 16 provides for definite action under definite conditions. For the first time in the history of the League these have been fulfilled: a breach of the Covenant has been committed, and the breach has been established by the unanimous voice of the League. It is true that in the case of Corfu (a case strangely omitted by Professor Sarolea), Italy was guilty of conduct which might have been treated by Greece as an act of war, and the League might have been asked to act under Article 16. But Greece declined to press the issue, and in like manner China failed in the matter of Manchuria to take the necessary steps to make Article 16 effective. In neither case could the League act when the Powers attacked declined to treat the attack as war. Nor did Austria charge the Reich with an act of war on the occasion of the Chancellor's murder, nor, it must be added, has any legal proof been adduced that the Reich plotted that murder. The League can act only on definite facts properly ascertained, not on the surmises of private persons.

(2) There appears to me to be no truth whatever in the allegation that the British Government repeatedly violated its solemn treaties with Italy, and that but for

this repudiation there would have been no Ethiopian-Italian dispute. Italian acceptance of the treaties of peace and the League Covenant, necessitated by the Allied failure to win the war without the help of the United States, a result for which Italian failures were in part responsible, extinguished the high hopes of Italian expansion, but it equally extinguished the obligations of the secret treaties. The British Empire under the Covenant, together with all the other members of the League, renounced all engagements incompatible therewith. To accuse Britain on this score of repudiation of solemn obligations is an accusation which every British Government is entitled to resent.

(3) The obligation to impose sanctions which arises under Article 16 of the Covenant is imperative and categorical. If Britain decides to hold that it is not bound to give effect to it, it can do so only on the ground that no treaty need be respected unless it seems convenient to do so. That means the complete collapse of the Locarno Pact and the efforts to establish a system of collective security. If France has some understanding with Italy which prevents her carrying out her obligations under the Covenant, and she fails to act with Britain at this crisis, she must recognize that for her future security she need not look to Britain. French intransigence has re-created the German Army; a French breach of Covenant obligations will ensure that she will not have British support against that Army.

(4) Supporters of sanctions do not believe that Ethiopia, poor and without adequate supplies of arms, can herself defeat the attack of Italy.[1] They have never

[1] This view was confirmed by the collapse of Ethiopian resistance in April and May 1936.

conjured up pictures of Italian defeat and demoralization. They have no desire to use sanctions to destroy Fascism, which, for all they know, may be the highest form of political organization for which the Italian people are ripe. They recognize that, in defiance of solemn pledges under the League Covenant, and not less solemn pledges under the Paris Pact of 1928, Italy is waging a war of undisguised aggression on a country whose sovereignty and independence Britain is under a categorical obligation to maintain. They have no desire to inflict suffering on the Italian people; they only desire to fulfil a clear duty to attempt to end a war which, Professor Sarolea assures us, is being waged by Italy with all the fanaticism and cruelty which have always characterized Holy Wars. Professor Sarolea forgets in his dread of sanctions that those who advocate them recognize their danger, but, unlike him, also recognize that failure to attempt them would lead to results as disastrous as any that sanctions can produce. What, he might consider, would be the effect on Germany, Hungary, Bulgaria, and Poland of the spectacle of the destruction of Ethiopian sovereignty with the acquiescence of the League?

9. THE RESULTS OF THE FAILURE OF SANCTIONS

To the Editor of THE SCOTSMAN, *31 December 1935.*

The Duchess of Atholl is completely mistaken in ascribing to me the view that, unless there is 'rigid adherence' to the obligations of Article 16 of the League Covenant, there will be a complete collapse of the Locarno Pact. Rigid adherence would have compelled

us forthwith to close[1] the Suez Canal; this action would have involved the use of force, and it has always seemed to me, as to the great body of supporters of sanctions, that it is wiser to refrain from such a step except in reply to attack. The oil sanction which I approve involves no attack, but merely voluntary abstention from making profits by supplying Italy with the means of carrying on against Ethiopia a war which, according to Professor Sarolea, she is waging with all the fanaticism and cruelty which characterize Holy Wars.

The Duchess does not realize that the Locarno Pact, which it is desired to supplement by an Air Pact, not yet concluded, between the Powers concerned, is essentially based on the League of Nations Covenant, and is not a substitute for it. It is sufficient to note the attitude of Sir Austen Chamberlain, the author of the Pact. He has clearly indicated that he holds that

[1] On the legal question of the right to close the Suez Canal to Italian transport of troops and munitions of war there has never been any doubt. The Chairman of the Company speaking at Paris on June 8 naturally stressed the fact that Article 1 of the Convention of October 29, 1888, provides that the canal shall remain open in time of war and that the Treaty of Versailles confirmed the Convention. But he naturally simply ignored the terms of the League Covenant which clearly compel, in case of breach of the Covenant established by the unanimous voice of the members of the League other than the offender, action by each State to sever all relations with the offending Power. Plainly, therefore, the canal should in strict law have been closed. The Chairman's allegation that such closing would have constituted an act of war against Italy is fantastic. Italy in fact has committed under the terms of Article 16 of the Covenant an act of war against the States members of the League.

The attitude of France, bound by a secret and illegitimate agreement with Italy, doubtless rendered closing of the canal difficult, but it is ludicrous to appeal to international law as an authority to sanction the deliberate breach of fundamental principles of that law, and such appeals help to explain the utter contempt with which Italy and Germany have treated that law and the grave failure of Switzerland, without excuse of any kind, to give effect to her obligations in the matter of sanctions.

sanctions should be made effective by the adoption, if possible, of the oil sanction. The reason is simple; if, in a perfectly clear case, where the Covenant demands its application, the members of the League will not apply an economic sanction which is calculated to be effective, then an essential feature of the Covenant is gone, and with it the binding force of the Covenant, and of all the compacts based on its binding force.

The Duchess attributes to me a threat that, if France does not fulfil the obligations of the Covenant, she will have no support from us if attacked by Germany. Needless to say, I made no threat but merely repeated what Sir Samuel Hoare insisted upon in the October debate, when he pointed out that most of the British people regarded the League as the bridge between Great Britain and Europe, and that, if this bridge were gravely weakened or destroyed, co-operation between Britain and the Continent would become difficult and dangerous. M. Reynaud has stressed the same argument in the French Chamber, and M. Laval clearly admits its force.

The argument that the League exists to preserve the *status quo* is in this case peculiarly unfair. The League succeeded before war broke out in securing acceptance of proposals which would have conferred substantial benefits on Italy, which preferred to challenge the League, relying, doubtless, on the reluctance of its members to risk the danger of war. Those who seek peace at any price forget that the success in this matter of Italy must result in Germany putting forward unanswerable claims for the restoration of her African and Pacific possessions, and for the recognition of her right to union with Austria.

The accusation that the British Government failed

to implement the Treaty of London and the agreement of St. Jean is inexcusable. Italy deliberately superseded these accords by (1) her participation in the negotiation, signature, and ratification of the treaties of peace which precluded the fulfilment of her aims; and (2) her participation in the decisions as to the allocation of the mandates. As regards Ethiopia, she insisted on securing the entrance of that Power into the League, thus formally renouncing any right to affect its territorial integrity and sovereignty; and in the fullest knowledge of the failure of her colonial ambitions she signed the Paris Pact of 1928 renouncing the use of war as an instrument of national policy. It is the fact that the action of Italy is undisguised aggression that places before the League no alternative but to resist effectively or to dissolve.

10. THE OBLIGATION OF SANCTIONS

To the Editor of THE SCOTSMAN, *2 January 1936.*

The Duchess of Atholl is completely mistaken in thinking that the closing of the Suez Canal would have been a military sanction. On the contrary, it would constitute a civil sanction of the most effective kind, and if Article 16 were to be carried out fully it would be essential to take this step. But its application would so directly have menaced the ruin of Italian aggression that Italy must have either abandoned the adventure or attempted to force a passage. In view of the uncertainty of French support, the British Government doubtless rightly refrained from action.

The oil sanction consists in not selling oil to an aggressor. Signor Mussolini has never stated that this would mean war; it is a purely economic sanction, and

his only pronouncement was that such sanctions he would meet by economic measures. That he would actually attack Malta or Egypt because an oil sanction was applied is a mere matter of conjecture, used by M. Laval to induce Sir Samuel Hoare to action repudiated by this country and the vast majority of members of the League. Happily, the Government of this country, in accordance with the emphatic views of the electorate, has declined, on reflection, to be intimidated, and is prepared to proceed to this sanction if the United States will co-operate, unless France fails us.[1]

The error of the Duchess is that she does not realize, as does Sir Austen Chamberlain, the author of the Locarno Pact, that the value of that and of all similar accords is dependent on the maintenance intact of the principles of the League Covenant. There is no truer friend of France than Sir Austen Chamberlain, but he, like Sir Samuel Hoare, has felt bound to give the warning—miscalled threat—that failure by France to honour her obligations now will render the pact worthless. The speakers in the French Chamber apparently realize more clearly than does the Duchess, that for this country the choice lies between the effective working of the League Covenant and isolation. Already a very grave responsibility rests on France for failing long ago to make it clear that she could never acquiesce in aggression against Ethiopia, in defiance of the League Covenant.

The Duchess doubtless wrote in haste, or she would have noted that my references to the Treaties of London and St. Jean were not made in reply to her letter, and

[1] France did fail, with the inevitable result that Germany realized that Britain could not resist the remilitarization of the Rhineland, which took place on March 7, 1936.

that I made it clear that I approved the generous terms which would have been given to Italy to induce her to refrain from war. But she is wrong in thinking that the Covenant 'suspended' the secret treaties, leaving it possible to revive them later. Article 20 of the Covenant abrogates, i.e. annuls absolutely, all obligations inconsistent with the Covenant, and forbids the conclusion of any such agreements in future.

Lady Maxwell-Scott's evidence of the indifference of Italy to the present sanctions, and of the whole-hearted support lent by the clerical party to the policy of aggression, is in complete accord with the destruction by bombing of the Swedish ambulance at Dolo. Does the Duchess, in view of such an action as this, really think that we ought to continue to provide Italy with oil in order to help her to destroy the territorial integrity and political independence of Ethiopia, which she deliberately undertook to respect and preserve? Does she agree with Professor Sarolea that moral considerations must give place to issues of practical advantage, such as apparently are influencing the attitude of Belgium at the present moment? I trust she knows too much of the history of the Empire to share the ludicrous belief that the means by which it was obtained were similar to those now adopted by Italy, and that therefore we are unable morally to condemn her action.

11. THE LEAGUE AND SANCTIONS

To the Editor of THE SCOTSMAN, *9 January 1936.*

(1) Professor Sarolea is most depressing. He assures us that a drastic reform of the League is the most pressing need of the world, but that even a reformed League

may not be able to avert war. Now, it must be perfectly obvious to him that reform of the League on the lines suggested in his indictment is simply impossible, and is absolutely precluded by the provisions of the Covenant prescribing the mode of amendment. He is therefore demanding a reform which he knows to be impossible, a position to which he has been led by his erroneous belief that the League has proved a failure. The League is at the present day being tested. It has shown admirable justice and unanimity in condemning a disgraceful act of aggression, and the whole point is whether it will show 'lamentable impotence' in dealing with that aggression. It appears that the President of the United States and Congress are prepared to afford aid, and the outstanding question is whether France is precluded by the recent secret treaty with Italy referred to by Professor Sarolea from carrying out her clear obligations under the Covenant.

(2) Mr. Scott's letter deprecates support of the League and the carrying out of a categorical treaty obligation because it may cripple the poultry industry. This means that no sanctions whatever can be applied, for it is perfectly obvious that injury must result to countries which impose sanctions, and the League Covenant expressly recognizes that fact. Mr. Scott fails to realize that wars cannot be stopped without sacrifices. What he could have urged with more reason is the failure so far to extend sanctions to other exports. The Covenant clearly anticipated rapid and complete stoppage of trade with an aggressor as an effective means of bringing war to an end, and it is quite probable that partial application of sanctions may prove a grave mistake.

(3) Not even the deplorable ignorance of Imperial

history which prevails in this country can excuse an assertion that 'the British Empire was built up just as Italy is now doing', or a reference to 'thieving territory'. No part of the Empire was acquired by methods which are comparable to those now being adopted by Italy, and almost[1] the whole of its enormous area was acquired by means which were not merely in accord with the international law and moral code of the day, but which would pass the test of our developed legal and moral standards. The cause of Italy must indeed be bad when it can be defended only by such means.

12. THE DISREGARD OF INTERNATIONAL LAW

To the Editor of THE SCOTSMAN, *3 February 1936.*

May I comment on the remarkable treatment which has been accorded of late to the established doctrines of international law?

(1) The French Government has treated the categorical requirements of Article 16 of the League Covenant as facultative, despite the fact that it was France which put a stop to the effort made to reduce the drastic character of the Article by insisting that its original terms were essential in her interests. Put plainly, this doctrine, if finally persisted in, deprives France of any right to expect other Powers to implement their engagements towards her, and justifies the view that this country need not regard itself as bound to give effect to the terms of the Locarno Pact or any other engagement towards France.

(2) This country has not gone so far as France, but it has adopted the convenient doctrine that Article 16 is to be read subject to the condition that its terms are

[1] The exception is Sind.

to take effect only in so far as all, or at least most, of the other Powers bound by it see fit to give them their support. It is clear that this attitude is virtually to rewrite the Article, but at least it can be said that the British Government at an early date endeavoured to secure some change in the terms of the Article, and that its action is far less reprehensible on legal grounds than that of France.

(3) Italy has not merely violated the League Covenant and the Paris Pact deliberately and without a shadow of excuse, but has with singular effrontery attempted to deny the right of this country to strengthen its defences in the Mediterranean and Egypt. It has apparently seriously put forward the argument that this step should not have been taken without the sanction of the League of Nations, and it has contended that it is improper of Britain to have asked for assurances from other members of the League that they would carry out their obligations under the Article to afford Britain assistance if attacked by Italy. For a Power which has defied its clear obligations under the Covenant to denounce as guilty of international wrongdoing this country for obeying its clear obligations manifests a complete perversion of the conception of legality.

(4) Not less amazing is the pronouncement attributed to Mr. J. B. Moore that the United States Neutrality Bill to permit or require the President to curb exports of war material would obviously bring that country fully into any war to which it was applied. This is a complete negation of the doctrine of national sovereignty, and asserts that it is the duty of a country to allow foreign countries unfettered access to its products and manufactures in war-time. It is presumably

on the same basis that the Italian Government has threatened the Egyptian Government with demands of compensation for its action in applying sanctions. It is a wholly new and most objectionable claim, and it may be hoped that the Government of the United States and Congress will treat it with the contempt which it deserves.

(5) The utter disregard for pledges by Italy renders worthless the latest assurances that Italian domination of Ethiopia would respect British Imperial interests as a sacred trust. The adherence of the Union of South Africa to sanctions, despite the complete independence of its Government of British control, is based on a fundamental fact, to which opponents of an oil sanction remain unwisely blind, that Italian sovereignty over Ethiopia would inevitably be followed by the acquisition of domination over the Sudan and Egypt. Signor Mussolini's insistence on the conquest of Ethiopia shows him to be fully aware of the implications of his action, and it is not surprising that he is mobilizing every effort to induce the British Government to refrain from action. But it is amazing to find so many people here prepared to second his plain intention to destroy the British hold on Egypt.

13. BRITISH AUTHORITY IN THE MEDITERRANEAN

To the Editor of THE SCOTSMAN, *20 February 1936.*

The remarkable character of the Hoare–Laval proposals for an Ethiopian settlement becomes more intelligible in the light of the statement ascribed to the Inter-Departmental Committee under Sir John Maffey by the Italian Press, that no vital British interests were involved in the acquisition by Italy of control over

Abyssinia. It would be very interesting to learn the justification for this amazing doctrine, which appears to have led Mr. Baldwin to regard with equanimity arrangements under which space might be found in Ethiopia for a colony of a million Italians in due course.

Nothing is more obvious than that British control of Egypt and the Sudan is wholly incompatible with the presence of a great European Power in Ethiopia. The British Empire ought to be well aware of the grave burden imposed by the proximity to British territory of a foreign Power from the history of relations with Russia. There would be far greater danger in the case of the presence of Italy in control of Ethiopia, and represented there by a large Italian colony. Not only could Italy inflict fatal injury on the Sudan and Egypt through her control of 80 per cent. of the water of the Nile, but her European forces and her Ethiopian armies would enable her at pleasure to force British compliance with Italian policy, with the alternative of ejection from Egypt or the protection of that country at overwhelming cost. The idea that Italy would be content with Ethiopia seems absurd; no doubt Italy would be delighted by assurances to this effect to secure British indifference to her conquest, but once established there she would have no difficulty in persuading herself that her manifest destiny required her control of the Suez Canal and of Egypt. The Duce indeed has not troubled to conceal his Imperial ambitions, and the present venture is merely their indispensable preliminary.

It is curious that those who are always urging Britain to be realists in foreign policy should apparently be perfectly content to watch the substitution as a neighbour to British dependent territory of an Imperial

colonizing Power in lieu of a weak Ethiopia. Would they be equally complacent over the acquisition by Russia of Afghanistan? Britain has been at all times prepared single-handed to fight rather than allow Afghanistan to become a Russian dependency, and it is rather surprising that she is not even prepared to carry out a categorical treaty obligation to prevent her own subjects supplying oil to facilitate an Italian conquest which would constitute a direct menace to the Empire.

The utter futility of half-hearted sanctions is well illustrated by the recent agreement with the Free State which has enabled Mr. de Valera to cease paying bounties on export of cattle and horses. No one can doubt now the complete failure of Mr. Thomas's plan of reprisals; their one chance of success disappeared when their basis was undermined by the concession of 1935, now widely extended.[1] Just as Mr. Thomas's policy failed through lack of prevision, so our policy now threatens to irritate Italy without hampering seriously her effort to secure a position whence she can advance to the exclusion of British authority from the Mediterranean.

14. THE FRENCH SECRET AGREEMENT AND THE OIL SANCTION

To the Editor of THE SCOTSMAN, *25 February 1936.*

Surely there is something wholly wrong with the doctrine of Mr. Eden that he cannot publish information in his possession with regard to the terms of an agreement between foreign Powers which they have not seen fit to publish themselves. France and Italy

[1] See Keith, *Letters on Imperial Relations, 1916–1935*, pp. 343, 344.

have clearly entered into an agreement whose terms are of interest to this country; it is the duty of the Government to ascertain as best it can the terms of any such agreement; and its only excuse for not communicating what it knows to Parliament must be that it is not in the public interest to disclose the facts. That the two Powers have not published them affords no reason in itself for withholding them; Powers which plan action of a character unfriendly to Britain are not likely to make public the terms of their accord, but it may be of the utmost consequence to the British public to know the facts. Unless we know the dangers to which we are exposed, we cannot be expected to accept as necessary great increases in the cost of defence.

Further, the hesitation of this country to proceed to impose an embargo on the export of oil, in so far as lies within its own authority, seems inexplicable. We are under the most formal obligation to preserve as against external aggression the territorial integrity and political independence of Ethiopia, and to sever trade relations with Italy. It is ridiculous to pretend that imposition of an oil sanction would make no difference to Italy; the threats which have intimidated some of our legislators negative that view. It is perfectly clear that it would have the same effect as the sanctions already in force of increasing the cost to Italy of her purchases, and thus rendering greater her financial burdens. It must from the first have been apparent that it was absurd to expect the United States to take action when the League members who were under a categorical obligation to act refused to do so.

It is unfortunate that the Maffey Committee's memorandum is not to be published when its terms are available in Italy. But, if Mr. Eden's summary is

adequate, it appears that that body held that 'there were no important British interests affected in Abyssinia, with the exception of Lake Tana, the waters of the Blue Nile, and certain tribal grazing rights'. The Committee, therefore, seems to have admitted what to me seems obvious, that a most vital British interest is affected, that of the Nile waters. I confess I cannot understand the view that the report negatives our having interested motives in standing out for the maintenance of the independence of Ethiopia. It is an obvious and essential interest of this country that its authority over Egypt should be secure, and, happily, with the dropping of our claim to dictate the form of the Egyptian Constitution, there seems at last hope of an Egyptian alliance.

Mr. Eden ignores also the essential question of the German claim for colonial mandates,[1] and Mr. Thomas had denied the possibility of transfer. But it must be plain to both of them that, if Italy secures Ethiopia, Germany must have compensation, and that in such an event she will not be satisfied by the mere return of her former territories. Those who are prepared in fear of Italian attack to surrender Ethiopia must be ready to accept German domination in what is now Belgian and Portuguese Africa.

15. THE SANCTITY OF TREATIES

To the Editor of THE SCOTSMAN, *9 March 1936.*

Sympathy with France cannot blind us to the fact that her own action in encouraging, as it is now clear she did, Italy to seek compensation in Ethiopia for her refusal to cede her own colonial territory was a clear

[1] See nos. 15–19, *post.*

breach of her duty under the League Covenant, and that ever since Italy was declared an aggressor by the League France has not only defaulted in her categorical duty, but has been the cause of like failure in others. Two wrongs[1] do not make a right, but a Power which deliberately declines to carry out its own undeniable obligations cannot convincingly denounce the immorality of another Power which acts in like manner, and France bears a very grave responsibility for the virtual destruction of the effect of Articles 10 and 16 of the Covenant. She enunciated in her attitude the doctrine that treaties should be regarded only in so far as proved convenient, and she is now suffering from precisely the same treatment meted out to her.

For this country the time has clearly come to consider in every aspect the question of the German claim for colonies, to which Herr Hitler has finally been converted. Does the Government intend to adhere to Mr. Thomas's declaration that the mandated territories will not be restored to Germany, even under mandate? Or is the Government prepared to consider transfer in return for some definite concession, for example in respect of a demilitarized frontier zone? No doubt the issue is complicated by the question of the Dominion mandates, but the question cannot be indefinitely evaded, and it is quite different from the quite illegitimate proposal to hand over either British colonies or British protectorates to Germany or any other foreign Power. Unfortunately, Germany's disregard for treaties suggests the doubt whether any concession which she might promise in return for the rendition of her former holdings would be worth the paper on which it was written.

[1] The other was the German denunciation of the Locarno Pact.

16. THE GERMAN DEMAND FOR RETURN OF COLONIES

To the Editor of THE SCOTSMAN, *7 April 1936.*

The Chancellor's speech reveals a very definite change in the attitude of the Government to the German demand for a return of her colonial territories, as compared with the flat negative of Mr. Thomas. It is clear that concession must definitely be accepted if Germany is to return to the League. Herr Hitler, ambiguous on other topics, has made his position on this head so plain that those who regard the return of Germany essential to European peace, as the Government is understood to do, must be prepared to pay the price. Any vagueness on this subject will merely lead to fresh trouble.

But it is refreshing to learn that the Government is not prepared alone to sacrifice territories held in mandate. France, Belgium, and the Dominions will have to play their part. The Union of South Africa has already indicated refusal, but that attitude is wholly inconsistent with the enthusiasm with which Mr. Pirow assured Germany that he would be glad to see her once more in possession of African territory.[1] It would be cynical to suggest that Mr. Pirow was contemplating that the Union would alone retain her mandate and incorporate it in her territory, while Britain restored Tanganyika, Togoland, and the Cameroons, and Australia New Guinea. Samoa, we may suppose, Germany might not trouble to claim.

There is one point of fundamental importance which ought to be faced and worked out. It is held essential

[1] See Keith, *Letters on Imperial Policy, 1916–1935*, p. 346.

to safeguard the interests of all sections of the population of the transferred territories, including obviously both British settlers in Tanganyika, who have so often been assured of the permanence of the mandate, and the natives. Now the present system affords no real safeguards. The apparatus of the mandatory system is such that all depends on the goodwill and policy of the mandatory Power. If there are to be real safeguards, the minimum will have to be to give to the inhabitants the right of access to the League of Nations and to the Permanent Court under such conditions as will ensure the power of the bodies effectively to investigate grievances and to secure their remedy. Whether machinery to effect this can be devised is uncertain; but, unless this can be arranged, it is idle to talk of safeguards, and it must be recognized that for their fair treatment those in the transferred territories will have to rely on German policy alone. Nothing, at any rate, can be worse than safeguards which irritate and are useless as a means of effective defence.

17. THE UNION OF SOUTH AFRICA AND THE GERMAN DEMAND FOR RETURN OF COLONIES

To the Editor of THE SCOTSMAN, *10 April 1936.*

The Duke of Montrose is too true a Scot to see a joke, or he would have realized that I wrote sarcastically of Mr. Pirow. The point is that Mr. Pirow has placed himself and the Union in the most difficult position. The arguments against the return of South-West Africa to Germany used by the Duke are not open to Mr. Pirow, for he has publicly acclaimed the fitness of Germany to hold a mandate, and welcomed the prospect of

her return to Africa. The truth is that Mr. Pirow was endeavouring to win popularity with Germany by the expression of readiness to see Britain surrender Tanganyika, while the Union retained South-West Africa. He was guilty, happily in a very reduced form, of the same kind of political immorality which M. Laval contemporaneously exhibited when, refusing just compensation to Italy at the cost of some surrender of her vast areas by France, he gave Italy a free hand in Ethiopia. If France is surprised at British complaisance in the face of the violation of the Locarno Pact, the explanation lies in the encouragement she gave to Italy to violate the League Covenant and the Kellogg Pact, and in the deep resentment which many of us feel at being compelled to violate our own clear obligations under the Covenant, because France is determined to make good the pledge which wrongfully she gave to Italy.

If I may risk another joke, may I suggest that the Duke is imitating too closely the habits of the African ostrich when he advises those who love peace to drop at once any talk about meddling with African territory or rights? Herr Hitler has at last been converted to the demand for colonial territories; how far Italy's action has conduced to this it would be interesting to know, and it will be poetic justice if France sees Italian success achieved at the cost of herself having to surrender the former German colonies which she took in mandate. Mr. Thomas has quite correctly declared that Britain does not now contemplate parting with mandated territories. The Chancellor of the Exchequer, the Home Secretary, and the Under-Secretary of State for Foreign Affairs have made it clear that the British Government is not prepared to negative return as part of an international settlement restoring Germany to the League

and to co-operation in security. Neither we nor the Union can avoid discussing these matters with other sovereign States, and I suspect Mr. Pirow is now wondering whether vicarious generosity is wholly wise.[1]

18. BRITISH FOREIGN POLICY

To the Editor of THE SCOTSMAN, *4 May 1936.*

Mr. Eden must not be surprised if foreign opinion attributes to British hypocrisy his assertion that we have sought to play our part under the signed League Covenant obligation to the full. He is perfectly well aware that Article 16 of the Covenant placed on us a categorical obligation to sever relations with Italy once the League had decided that she was an aggressor; that our suggestion to reduce the stringency of the obligation by amending the Covenant had been rejected by France and other Powers; and that in failing to act as required under Article 16 Britain definitely defaulted on a treaty obligation. Our default is mitigated from the moral point of view by the refusal of France to perform her obligation; and it may have been unavoidable, if, as may have been the case, the Committee of Imperial Defence advised that our defences had been so neglected by the Governments of Mr. MacDonald and Mr. Baldwin that we dare not risk an Italian attack. But it is dishonest to pretend that we have not broken a singularly clear obligation.

After the failure of France and Britain alike to observe Article 16 of the Covenant, it is foolish to talk of any obligation to observe the Treaty of Locarno.[2]

[1] Mr. Pirow's opinion, expressed on his return to Africa, that Germany would not be satisfied without colonies, but that political, economic, and strategic conditions since 1914 negatived the return of South-West Africa and Tanganyika, seems to hint at sacrifices by Portugal or Belgium.

[2] See ii, no. 6, *ante*.

That Treaty was concluded in order to implement the Covenant; in doing so we had to part company with the Dominions, and it should be our first business to get rid of any semblance of an obligation which separates us from the rest of the Commonwealth. Mr. Eden should be called upon insistently to bear this fact in mind in any negotiations for a new understanding.

Further, I hope that Conservative members of the Commons and Lords will cease to delude themselves into the belief that we can retain Germany's territories. The aggrandisement of Italy and the collapse of the League security provisions render inevitable and irresistible the demand of Germany to share control over Africa. The argument that recovery of her former territories can be of no service to Germany is ridiculous; the German territories were taken over without any regard to the wishes of the natives; we cannot honestly say that Germany would misgovern Tanganyika,[1] and the Union's government of South-West Africa lost any chance of acceptability by the natives when it set the fashion of aerial bombing of defenceless tribesmen. The Union cannot expect Germany to be denied the right of raising native armies now enjoyed, and doubtless to be widely extended, by Italy. A German demand for the return of her territories is infinitely more justifiable than the Italian action in Ethiopia, and the friendship of Germany is far more valuable to any Power than that of Italy. Now that our position in Egypt and the Sudan is so seriously menaced, the sooner we come to an amicable understanding with Germany the better in every way. We can still use the German territories as a bargaining counter; later this may cease to be possible.

[1] See ii, no. 31, *post*.

19. THE FUTURE OF THE MANDATED TERRITORIES

To the Editor of THE SCOTSMAN, *8 May 1936.*

Extreme Germanophobia is the only possible excuse for the attribution by Sir J. D. Ramsay to me of the 'suggestion that the natives in Tanganyika and South-West Africa were likely to receive better treatment under the rule of Germany than under that of the Union of South Africa'. What I said was simply, 'We cannot honestly say that Germany would misgovern Tanganyika, and the Union's government of South-West Africa lost any chance of acceptability by the natives when it set the fashion of aerial bombing of defenceless tribesmen.' But I suppose any argument is possible from a writer who evidently believes that Tanganyika is under mandate to the Union of South Africa.

I can hardly believe that Sir J. D. Ramsay imagines that the rule of the Union is acceptable to the natives of South-West Africa. Under the pre-war régime the Ovambos were left undisturbed, and the Germans never entered their territory; since 1924 the Bastards have lost their old power of self-government; nor do the natives seem to have forgotten the bombing of the Bondelzwarts. They feel, no doubt correctly, that European rule, avowedly in the interests of Europeans, whether German or Union, has few attractions, and would much prefer to be ruled by neither.

Comparison of atrocities serves little useful purpose, but it is fair to point out that Germany was an ordinary conqueror fighting a real war, while General Smuts had undertaken a sacred trust of civilization, and was

confronted by trivial unrest which should have been disposed of by normal means.

The future of the territory should be left to be determined between Germany and the Union. Mr. Pirow has put it out of the power of the Union to deny the fitness of Germany to hold a mandate, and the German settlers are an important local element.[1] The Union would probably be well advised to seek some compromise. My only point is that there is no ground for British intervention. Mr. Pirow is now said[2] to desire to discuss co-operation in defence with the British Government, but he really must not expect us to forget his solemn warning on February 5, 1935, that 'the Government is not prepared to participate in any general scheme of Imperial defence', and the most deliberate and complete homologation of that doctrine by General Hertzog on February 8, and his reassertion of the doctrine of the right of neutrality. There must be mutuality of obligation, as in the case of New Zealand, if Britain is to be bound to adopt the policy which suits a particular Dominion. Sir P. Ford's Australian protégés[3] are the people who have adopted the Union doctrine of the right of neutrality in British wars, but who expect us to maintain the White Australia doctrine by the British Navy. This is a deplorable idea, to which the Locarno Pact unhappily gave encouragement, and I hope that we shall not be committed by any future pact in like manner.

As regards Tanganyika, thanks to the mandatory system, we have administered it in a much more

[1] See ii, no. 16, *ante*, and the Report of the Commission issued June 12, 1936.

[2] See i, no. 24, *ante*.

[3] The Labour Party in the Commonwealth opposed sanctions and demanded neutrality.

creditable manner than we have Kenya, and I have suggested that we should take every possible means of trying to secure that, if the territory reverts to Germany, sound methods of government should continue. I note without surprise that nothing will induce the Prime Minister to promise that he will not consider the possibility of such retransfer. Common sense will suggest that he is right, and Mr. Baldwin probably remembers too clearly the folly of promises which cannot be made good, as seen in the Irish surrender of 1921, to be willing to give assurances that cannot be kept. Sooner or later the allocation of territories in Africa will have to be readjusted, and Tanganyika affords the natural contribution of Britain to the readjustment.

20. GREAT BRITAIN AND THE LEAGUE

To the Editor of THE SCOTSMAN, *11 May 1936.*

Sir P. Ford desires to remove from the League Covenant the principle of collective security, its most vital feature, and to reduce the League to a very expensive secretariat. But I cannot find on what he intends us to rely for our security unless it be (1) the British Empire, and (2) 'refraining from unnecessary and nagging criticism, and keeping in constant and discreet touch with all the purposes and actions of surrounding nations'. To rely on these sources for aid in securing our safety seems to me, frankly, absurd.

(1) As regards help from the Dominions, Sir P. Ford should remember that the Irish Free State and the Union of South Africa refuse to accept implication in British wars, assert the right of neutrality, and would unquestionably exercise it unless they felt themselves in imminent danger. Neither has a fleet or expeditionary

force. Canada is defenceless, and aid thence could only come after prolonged delay, if at all, and after a General Election fought on the issue. Australia even in the Great War rejected conscription; it has abandoned compulsory service; its power to aid us even if it desired is minimal, and the Labour Party has now espoused the doctrine of restricting action to defence when Australia is attacked. New Zealand alone proclaims solidarity of interests, and New Zealand's strength is minimal.

(2) Our attitude towards Italy cannot be treated as nagging criticism by any person who understands the issues at stake. They involve the British position in Egypt and the Mediterranean, and the security of British communications with the East. The British Government was in the fortunate position of being able to combine an absolutely categorical obligation towards Ethiopia with the defence of vital British interests. By lack of courage and clearness of purpose the opportunity was thrown away. If Sir P. Ford means that we are to seek safety in acquiescing in foreign Powers undermining our position, then it seems to me that his policy is the worst possible.

To retrieve disaster and re-establish the doctrine of collective security is a most difficult undertaking, though the provocative attitude of Italy in some degree facilitates action. But the alternative is not the securing of peace by passivity, but the certainty that, unless we are ready to surrender the dependent Empire and accept any other terms imposed by an aggressor, we shall have to face war without any assurance of aid. For that purpose we shall have to expend sums far in excess of even the crushing burdens now imposed, and even then we may not be able without compulsion to obtain the necessary number of men. We must really discard

pacifism of Sir P. Ford's type, and realize that without re-establishing collective security our future will be most difficult and most probably disastrous.

21. THE DISREGARD OF BRITAIN'S OBLIGATIONS UNDER THE COVENANT

To the Editor of THE SCOTSMAN, *15 May 1936.*

It is almost incredible that Earl Stanhope should venture to assert that Britain has carried out to the full her obligations under the Covenant. I can only assume that by constant repetition of this ridiculous assertion it is hoped to induce the public to believe that the Covenant contained a provision that action under Article 16 was conditional on like action by every member of the League. Needless to say, the Covenant neither contains nor implies any such provision, and attempts to amend Article 16 definitely failed. We are no doubt less guilty than the other members of the League, but to deny that we have violated a categorical international obligation is simply untrue.

There is one very serious question affecting our culpability in the matter which does not appear to have been put to the Foreign Secretary and which should certainly be put. Did we warn the Emperor of Ethiopia that we interpreted our obligation under Article 16 as conditional on action being taken by other members of the League? If we did, he must have known that he could put no faith in that Article. If he was not warned, our Government was guilty of a grave failure in an elementary duty. There can be no reason now for not eliciting the facts.

Further, does this country really approve of the possibility of difficulties being put in the way of the visit

of the Emperor to England? Is it forgotten that under Article 10 of the Covenant we are under an obligation to preserve against external aggression the territorial integrity and political independence of Ethiopia? How can we possibly attempt to prevent the Emperor visiting this country in order to remind us of our solemn obligations? The fact that any doubt should be possible on this subject is surely deplorable. If it is hoped to placate Italy by refusing him permission to come here, it is futile. The whole diplomatic history of Italy shows that all she respects is force.

22. BRITISH FOREIGN POLICY: ITALY AND GERMANY

To the Editor of THE SCOTSMAN, *3 June 1936.*

The Duchess of Atholl's criticisms of the views of Lord Carnock and others are doubtless sound so far as they go, but I fear she is too limited in her outlook when she insists that the greatest dangers to us are European. This is to look at the matter through insular glasses and to forget that the weakest part of the Empire is Australia, which is quite unable to protect herself against danger from the East without British aid. Any British policy which confines itself to the safety of these islands is radically unsound. Nor is there any satisfaction to be found in any policy which endeavours to rely on defence of the Empire by its sole forces. So little effective support could thence be forthcoming that a plan of this sort would be suicidal.

The Duchess's proposal to surrender at discretion to the Duce suffers, I fear, from a complete lack of realism. To do so would be to give formal sanction to the doctrine that treaties serve only to delude those

who put faith in them, as did Ethiopia, and should be broken without hesitation when any profit can thence be gained. Nothing can be more absurd than to suppose that the Duce's plan of re-creating the Roman Empire is now satisfied. He has not even, in his amusing interview with the *Daily Telegraph*,[1] pretended that it is, and all that he wants is time to consolidate his conquest before he uses it as a basis for establishing control over the Sudan and Egypt. He relies, very probably with justice, on the obvious spirit of defeatism which marks this Ministry, partly as a result of the admitted intention of its leader to abandon his post. But to me it seems the height of folly to acquiesce tamely in the complete alteration of the balance of power in the Mediterranean when effected by the deliberate violation of international obligations. It would be interesting to ascertain how far British inaction and failure to keep faith were influenced by the absurd doctrines of the Maffey Committee and by the miscalculations of the General Staff on the subject of the duration of Ethiopian resistance. It is probably a national disaster that at this juncture there is no effective Opposition in Parliament, for the Labour Party is rendered unconvincing by the divisions in its ranks and the failure of its members to realize that our long-continued efforts at unilateral disarmament have been futile.

I doubt also whether the Duchess is right in thinking that the real danger in Europe is from Germany. Herr Hitler broke his obligations only after France and we

[1] Curiously enough this masterpiece of evasion seems to have satisfied those to whom it was directed of Italian good faith as regards satisfaction of Italian ambitions. Italy, of course, would be false to herself if she refrained from persistence in undermining British power in the Mediterranean.

had broken ours towards Ethiopia and had proved that treaties, however solemn, were binding only so far as convenient. At any rate, if alliances are to be chosen, the German has obviously much greater advantages than the Italian. It is a great pity that our Government did not from the outset adopt to Italy the attitude of Lord Salisbury when for his time he put an end to her designs on British pre-eminence in East Africa.[1] But the lessons of history are ignored by the epigoni.

23. THE ITALIAN RÉGIME IN ABYSSINIA

4 June 1936.

The annexation of Abyssinia by Italy, without achieving the conquest of a very large portion of that territory, follows the precedent of November 5, 1911, when she annexed Tripoli, though only the coast and the capital were in her hands. It is significant that Count Aehrenthal at the time held the action premature and legally unjustifiable.[2] There is no answer to this criticism, except that other Powers have so acted, as did Britain herself in 1900 when she annexed the South African Republic and the Orange Free State.

[1] How Lord Salisbury saved Zanzibar from an earlier Duce is recorded in his dispatch to Goschen of October 14, 1888: 'In cynical and arrogant injustice it is impossible to surpass Crispi's policy towards Zanzibar. We have only prevented him from exacting what he pleased from the Sultan by keeping the squadron at Zanzibar and intimating pretty *plainly that force would be repelled by force*'; Lady G. Cecil, *Life*, iv. 236. Compare also his effective opposition in 1890 to the Italian ideal of invading Tripoli in time of complete peace and without the shadow of an excuse; ibid. 373. Italy in 1911 acted against Turkey without a shadow of legality, and it is significant that here again she had secured the approval of France by agreeing to her advance in Morocco which nearly involved Europe in war. The immorality of both French and Italian policy then, as in 1935–6, needs no emphasis. Cf. Gooch, *Before the War*, i. 431 ff.

[2] Ibid. 435.

In that case, however, there was the justification that these Republics had declared war on Britain, without in the case of the Free State any possible justification. In the case of Tripoli annexation was not under existing international law in itself illegitimate: the irregularity then was that it took place prematurely. In the present case annexation is a defiance of the League Covenant which renders it legally impossible for any member of the League to admit the validity of the annexation. The existence of the Covenant has completely altered the position since 1911, when no doctrine of international law interfered to prevent any Power that desired accepting the *fait accompli*.

The subjection of all British subjects[1] and other Europeans in Ethiopia to the Italian code announced on May 31 creates a difficult position for the British Government. British subjects in Ethiopia under treaty rights fall under British consular jurisdiction exercised under the terms of the Ethiopia Order in Council, 1934. The new régime seeks to deprive them of that privilege and to subject them to the domination of a usurping Power. No doubt the step taken is intended to increase pressure on Britain to recognize the annexation, and thus regularize the position. It is, however, clear that the British Government ought to decline to take any such step, should insist on its sole right to exercise jurisdiction over British subjects, and, if it cannot secure this, should treat the Italian jurisdiction as that of an invading army in possession of territory.

It is, of course, clear that the Italian action must act as a direct incentive to Japan to secure the abrogation by Manchukuo of the British and other foreign extra-

[1] The British legation was forbidden to send wireless messages in July, and submitted under protest.

territorial rights therein. Surrender to Italian illegality must necessarily encourage the expectation that Japanese encroachments shall likewise be submitted to.

A warm welcome is due to the initiative of the Argentine in securing the summoning of the League Assembly to discuss the annexation. Such action is the more justified because Italy herself became deliberately party to the agreement sponsored by the American States pledging themselves to decline to recognize any annexation of territory effected by action in contravention of the Kellogg Pact. The cynical disregard of that solemn accord is almost as discreditable to Italy as her violation of the League Covenant itself.

24. THE FUTURE OF SANCTIONS

OUTLOOK, *July 1936*.

It was with considerable surprise that the majority of the House of Commons learnt immediately after the flight of the Emperor that Sir Austen Chamberlain deemed the removal of sanctions forthwith desirable. As he had stood out to advocate the application of more drastic sanctions than those applied, it was perhaps natural that disappointment with the failure of the League should have induced him to a hasty conclusion that the whole episode must be written off. But further deliberation has not lessened the doubt widely felt even among his admirers. Recovery from the shock of defeat has resulted in a definite hardening in many quarters of belief that the surrender of sanctions would virtually mean the end of any real utility in the maintenance of the elaborate apparatus of the League. Nothing in fact can be more futile than the suggestion that by making the League a clearing-house

of information and a meeting-place for discussion the way can be prepared for it later on to exercise wider functions effectively. Reconstituted on this basis, the League meetings would be deserted by Ministers of importance, and its membership would rapidly be drastically reduced until all that was really alive would be the Labour Organization, which has a vitality of its own, not bound up with the political side of the League.

The fundamental truth is that the League has substantial value only in so far as it serves to prevent war, and that, so far from being an unfortunate excrescence, sanctions are essential to give it reality. The statesmen who insisted on including sanctions in the Covenant did so with the fullest realization of the lessons of recent history. They saw clearly that the breach of the Treaty of Berlin by Austria in the annexation of Bosnia and Herzegovina led inevitably to the Italian attack on Tripoli, in utter disregard of international and moral obligations, and to the German violation of the neutrality of Belgium. Treaties had proved worthless, because they were without sanctions; if international law were to become real, it must be made so by application of the principles of municipal law. Those who broke treaties, or violated the existing rights of sovereignty of any other state, must be brought to book by the operation of the authority of the whole body of member states.

The framers of the Covenant realized to the fullest degree the difficulty of sanctions. They had grown up in the atmosphere of the uncontrollable sovereignty of states, and they knew that they were making the greatest of innovations, but they also knew that nothing else would give the possibility of ending war. They

knew also from the success of the allies in the war that economic and financial sanctions might prove of enormous power. Knowing the complexity of the co-ordination of armed action, in Article 16 of the League Covenant they insisted on immediate severance of all economic and financial relations with any state which went to war in defiance of its obligations. Some states at the time and later thought the terms of the Article too drastic, but the French Government, amongst others, with complete logic insisted that nothing must be done to weaken the automatic effect of the provisions.

There is not the slightest doubt that in the case of the Italian onslaught on Ethiopia, if the terms of Article 16 had been given effect by Britain and France, Ethiopia must have been saved. The Suez Canal would necessarily have been closed to the passage of Italian forces and of the poison gas which brought about the débâcle of the defence of Ethiopia. The attitude of France at this crisis may well prove to have been the most disastrous episode of her recent history. Bound by a secret, and therefore, under the League Covenant, invalid, agreement to further Italian purposes, France refused to give effect to her categorical obligations. How far the failure of France excuses Britain for her failure to keep faith is a matter on which opinions differ. What, however, is perfectly clear is that Britain deliberately defaulted in her duty under Article 16. For France nemesis was not delayed. Herr Hitler had naturally watched with keen interest the reaction of the League to Italian aggression. In the fiasco of sanctions he realized that Germany need fear no resistance to the tearing up of the treaty of Versailles or the Locarno Pact by the military occupation of the demilitarized zone.

Late, but clearly enough, the realization has come to many members of the League that the acceptance of the annexation by Italy of Ethiopia means the destruction of international law. Hence the willingness of Sweden and Norway, of the Little and the Balkan Ententes, to welcome the continuation of sanctions; hence the unexpected energy of Argentina in asking for the summoning of the League Assembly to deal with this crisis. These states are under no illusion as to the result of final failure on the part of the League. Isolation being impossible, states will have to form heavily armed groups, between whom war will be inevitable. Moreover, with the destruction of any faith in the most solemn of treaties, relations within the groups will be wholly unstable, and Europe will revert to the miserable intrigues, treaties of insurance, and counter-treaties which marked the pre-war years and in which Italy played so consistently a wholly untrustworthy part.

For the British Empire the issue of sanctions is vital, because the Empire has gone infinitely further than any other great Power in accepting the view that the League Covenant created a new code of international law rendered effective by sanctions. It has been since 1919 an article of faith largely in the United Kingdom, and still more so in the Dominions, that economic and financial sanctions would assure the maintenance of peace and international law. Not only the United Kingdom but in still higher measure the Dominions have divested themselves of the means of defence to a degree utterly incompatible with anything short of a fervent assurance of safety under League auspices. Canada, confident in the League and in the United States, has disarmed and is defenceless. The Labour

parties in Australia and New Zealand have insisted on removing the régime of compulsory training for home defence, which they demanded as the minimum safeguard before the war. The Irish Free State maintains a force sufficient merely to maintain local order, not always without difficulty, and the Union of South Africa provides only for the rapid destruction of any native rising. In these circumstances it is not surprising that the Union has realized most plainly the vital importance of sanctions, and that no voice has been more clearly raised than that of General Smuts urging their maintenance. He personally had painful proof of the high fighting-qualities of Africans under German leadership in his East African campaign, and he has no illusions as to the menace to the Union of the establishment of an Italian Empire in Africa, with its inevitable sequel in the ever growing strength of the German demand for the transfer of the former German colonies back to her keeping. Australia and New Zealand realize that in collective security alone lies safety for them; with Europe a congeries of rival powers, the embroilment of Britain might mean fatal exposure to attack from Japan, against which local resources are almost negligible. Strangely enough, in Britain there seems for a time to have been the most amazing blindness to the attack on the British position in the Mediterranean and communications with India and Australasia involved in the Italian bid for Empire. The terms of the Maffey Committee report, so far as revealed, seem to have deluded the Ministry into the view that in seeking to vindicate Ethiopia Britain was acting from purely altruistic motives. No foreign Power can have been deceived by this position, nor does the Ministry seem prepared to maintain the pretence

longer. What may rightly be deplored is that when honour and international duty pointed for once in the same direction as vital Imperial interests the Government failed to make the fullest use of so rare a concatenation.

The maintenance, and if possible the enhancement, of sanctions is plainly the paramount interest of the Empire. The mere humiliation of Italy is not a British interest; all that is desired is to secure a substantial measure of justice for Ethiopia; the vindication of the League Covenant; and the safeguarding of the British position in the Sudan, in Egypt, and in Central Africa. Failure to achieve these aims will mark a definite epoch of Imperial decadence. That may be inevitable; dread of risking, however distantly, the outbreak of war may result in surrender which later will compel war under far less favourable conditions as the alternative to the destruction of the Empire. There are grave difficulties for a Power whose youth declares its determination not to fight in a world where the vast majority of states regard war as honourable. Nor is a Government whose head meditates retirement an efficient instrument for international negotiation.

For Scotland the sanctions issue has the same reality as for the Irish Free State. Mr. de Valera insisted from the first on sanctions on the wholly convincing ground that only through the vindication of the League Covenant could minor Powers hope to live their own lives, and he rejected with just scorn the suggestion of the Opposition that he should have bargained at Geneva demanding from Britain some return for Irish support for sanctions. Whatever fate is desired for Scotland, whether independence, Dominion status, or close association with England, her interests demand the making

of every effort to re-establish the principles of the League Covenant. The alternative is the dissipation of the wealth of the country in armaments, swiftly obsolescent, and the growing menace of the necessity of resort to compulsion to secure the forces necessary for self-defence. Liberty is the most precious possession of the Scots people; it can be preserved only by constant vigilance, and it has no more deadly enemy than the present widespread tendency to surrender to Roman Imperialism rather than exert the necessary force to vindicate the rule of law. Italy is ready to be friendly to gain breathing-space for the consolidation of her conquest, but the Duce does not even pretend that this conquest has fulfilled the Roman destiny. Nor can he be blamed if he now sees in Britain a Power unworthy of Empire in its terror of the idea of war.

25. THE CABINET ANARCHY

12 June 1936.

Nothing can be more significant of the disastrous results of lack of leadership than the episode of the speech made by the Chancellor of the Exchequer to the 1900 Club on June 10, in which he discussed the future of the League of Nations, and declared that the continuance of sanctions would be 'the midsummer of madness'. It would in any case have been singularly improper that an announcement of policy on a matter which fell to be decided by the League of Nations should be made by the Minister who was not concerned with foreign affairs, even if a decision had actually been taken by the Cabinet. But the case is infinitely worse when it appears from the admission of the Prime Minister in the House of Commons on June 11 that the line

of policy to be followed by the British Government had not finally been decided. It must be added that the impropriety of the declaration was increased by the fact that the decision to be taken must be reached in accord with the Dominions, and that the policy denounced as midsummer madness had been earlier declared necessary and desirable by General Hertzog and General Smuts. No more summary rebuke to a Dominion Government can ever have been recorded.

On the merits of the question it must be added that it is plain that a British Government of which Mr. Chamberlain is a member or head is virtually incapacitated from carrying out effectively any policy of sanctions. It has long been suspected that the failure of British policy to protect British interests and to vindicate international law was mainly due to Cabinet dissensions: the fact is now made clear, and it is impossible not to ascribe the paralysis of British action to the fact that Mr. Baldwin, contemplating an early retirement, has failed to exercise over his Ministry that effective control without which a Government, even if its members are talented, cannot play a worthy part in world affairs. We must go back probably to the failure of Lord Aberdeen's Ministry of all the Talents to deal with the Crimean War issue for a real parallel to the present failure of concentration on vital ends. It is only too apparent that the fiasco of Russian policy under that Ministry has been repeated with even worse results, for unhappily the failure to apply sanctions effectively and to maintain them involves irremediable discredit to Britain as a clear breach of an absolute obligation of honour. Mr. Eden's insistence that as regards British obligations to France under the Locarno Pact he would not break British pledges reads curiously in face of the

flagrant violation of the absolute terms of the League Covenant.

It is fair to add that the grave errors of the Government are in some measure excused by the confused attitude of the electorate. The electors in many cases had failed to face the essential truth that there is nothing more foolish than to be willing to wound but yet afraid to strike. They were anxious for sanctions, provided that war would not thence result, ignoring the fact that this attitude rendered impossible the imposition of sanctions of any value. How far this confusion of mind extended it is hard to say. The Labour Party had so long preached the doctrine of the danger of wars brought about by capitalism and the merits of pacifism that its support of sanctions was curiously embarrassed and became clearer only when too late to have much effect. But whatever allowances be made for the defects of the popular attitude, the duty of leadership rested with the Government, and it will probably rank in British history as one of the greatest misfortunes of the Empire that at a critical moment in its fate the statesmen representing it did not rise above the level of a respectable mediocrity. Disraeli, Gladstone, Salisbury would have realized more clearly the vital character of the crisis.

From the point of view of the Empire the episode emphasizes the dangers inseparable from the absence of any method for the conduct of foreign affairs on an effective basis of agreement between the units of the Empire. The Hoare–Laval terms were accepted, without reference to the Dominions for concurrence, by the Cabinet, which committed the grave fault of acting against its better judgement instead of disowning the grave error of the Foreign Secretary. They were

regarded with much dissatisfaction by the Dominion Governments as inconsistent with the policy of supporting the League Covenant on which they had agreed. In the same way the readmission of Sir S. Hoare to the Cabinet after six months' absence followed by the denunciation of the policy of Generals Hertzog and Smuts as 'midsummer madness' by the Chancellor of the Exchequer has elicited on June 12 dignified protests from the *Cape Times* and the *Rand Daily Mail*. It is curious that, after so much talk of equality of status, the British Cabinet yet assumes the right to decide on foreign policy without first considering with the Dominions the possibility of achieving common ground. No doubt, if the Dominions will not agree and the issue is held vital, the British Government must proceed; but there is no evidence of any necessity of action in this case without the fullest deliberation with the Dominions. The fact that there is sympathy in certain quarters—especially French-Canadian and pacifist—in Canada for Mr. Chamberlain's point of view is irrelevant in this regard, for Canada in its attitude to the League of Nations is deeply influenced by the United States, and, it must be remembered, from the first strove to eliminate from the League Covenant the obligations of Article 10. But the other Dominions, not protected from external aggression by the aegis of the Monroe doctrine,[1] may be excused if they regard the League in a far more favourable light as affording them a real chance of playing a part in foreign affairs.

It is natural that Germany should welcome the Chancellor's speech, as it suggests the abandonment of the reality of the League and the restriction of security to small groups of Powers, not including Russia,

[1] See Keith, *Governments of the British Empire*, p. 606.

against which Germany would thus be free to pursue her designs of conquest, unhampered by any danger of British obligation to intervene. The value, of course, of all pacts for security or otherwise is rendered negligible if Italy is permitted finally to consolidate a victory achieved in flat defiance of international law and secured only by the use of mustard gas in face of the most solemn undertaking by treaty to refrain from its use. It may seriously be doubted whether Britain will not pay dearly for her breach of faith in the necessity of enormous expenditure on armaments and of conscription, for it appears very doubtful whether the necessary forces for defence can be raised by voluntary means, except perhaps at the cost of payments which will gravely embarrass national finances.

26. THE EFFECT OF THE WITHDRAWAL OF SANCTIONS ON INTERNATIONAL LAW

To the Editor of THE SCOTSMAN, *18 June 1936.*

The withdrawal of sanctions, however excused, has one fundamental disadvantage. It destroys the British record for adherence to international obligations and the maintenance of good faith. Nothing can explain away the British failure to carry out a clear obligation categorical in character. Henceforth the keeping of any British obligation will have to be regarded as purely facultative, for the principle has been deliberately adopted by a National Government, which at any rate speaks for the Conservative Party and which claims to represent three million Liberals. It is perhaps the clearest proof of the moral deterioration induced by the war that the Government should have felt at liberty to adopt its attitude without giving the electorate the

opportunity of expressing its views. It is obvious that the principle of reversing policy without a fresh mandate may be applied in domestic issues as well. A Labour Government, which achieves power on the strength of a policy of studied moderation, will be at liberty to stand out once in office as a supporter of the most drastic and revolutionary changes, and certainly after the action of the National Government in this crisis it could not seriously be attacked on constitutional grounds.

With the destruction of the value of treaties, international law becomes meaningless and the League of Nations an idle show. We must, therefore, fall back on pure realism and face the necessity of seeking to propitiate Germany, as we have surrendered our position in the Mediterranean to Italy. Germany cannot be expected to keep the peace except on terms, and of these the most obviously just is her demand for the return of her former colonies, to set off against the acceptance of the Italian Empire in Africa. Nothing is more absurd than the apparent determination of the Conservative Party to demand that no return of mandated territory can be made. It is absolutely impossible to justify the aggrandisement of Italy and to maintain the depression of Germany, and it is scarcely credible that any party should be prepared to face the possibility of war with Germany to secure the possession of the Cameroons, Togoland, and Tanganyika. What is clear is that in the long run Germany cannot be denied colonial territory, and that the present conditions allow some chance of bargaining for a temporary improvement in European relations, whence possibly a more enduring settlement might be achieved. France and Belgium also should be made clearly to understand

that Britain cannot support them in resistance to any German demand for the return of their holdings of former German areas. To argue that we are under pledges to the natives or the British settlers in these territories that they would never be restored to Germany is useless, not merely because we have broken far more binding pledges in the matter of Ethiopia, but because we have never had any right to give such pledges. What we might strive for would be some assurance that Germany would accept the restrictions of the mandates as incumbent upon her. But it is plain that Germany will not forgo the right to raise native troops unless France and Italy give assurances that they will cease to employ such forces.

The assurance that the Mediterranean is not to be surrendered and that Malta will be strengthened cannot be regarded as of serious value. Malta is too near Italy to be safe, and the complete and absurd miscalculation of the duration of the war made by the military advisers of the Government prevents any feeling of confidence in their judgement. The attitude of the country towards recruiting for the Army shows very clearly how little we are prepared to dispense with the system of collective security and how deeply we lose by its failure. And as compared with Britain herself, the Dominions, save Canada, which has the protection of the United States, are defenceless. If Japan and Germany were to unite forces, the Empire would be in the utmost danger, a consideration which adds special weight to the reasons for adding Germany to the number of contented Powers.

27. THE BRITISH VIOLATION OF THE LEAGUE COVENANT

To the Editor of THE SCOTSMAN, *23 June 1936.*

As memories are so short, I shall be glad if you will allow me to point out to your correspondent that the clear and categorical obligation violated by the British Government in the decision to withdraw sanctions is found in Article 16 of the League Covenant, which provides: 'Should any member of the League resort to war in disregard of its Covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a member of the League or not. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval, or air force the members of the League shall severally contribute to the armed forces to be used to protect the Covenants of the League.'

You have allowed me in earlier stages of the discussion to point out that this Article was regarded by the framers of the League as vital, and that, while from 1921 on its modification was repeatedly discussed, the result was entirely negative, the French Government in 1925 announcing finally that it would never consent to modify in any respect the rigour of the Article. I

pointed out also, at the time when we first imposed minor sanctions, that we were in breach of our clear and categorical obligations, and that we were undermining the basis of the Locarno Pact. I do not suppose that any one really is blind to the fact that the German denunciation of Locarno was in part due to the spectacle of the violation by France and Britain of their obligation to apply full sanctions against Italy, and the realization that Britain, realizing the grave wrong done by France to Ethiopia in defiance of her obligations, would refuse to be induced by France to apply any measures of compulsion to Germany unless British security were directly involved. If Herr Hitler wished to retaliate for our inquiry as to German intention of keeping treaties in future, he need only refer to Article 16, and the action we actually took, and inquire whether this was the sort of good faith he could expect from us.

I note with surprise the deliberate ignoring by the Government and its supporters of the possibility or probability that the continuation of sanctions, together with local resistance in the unoccupied half of Ethiopian territory, would have secured better terms for the Ethiopians. I remember vividly how after our annexation of the Boer Republics in 1900 their resistance forced us to concede them terms which ensured the present predominance of the Dutch elements in South Africa. No doubt the knowledge that we were to abandon sanctions explains the threat of Marshal Graziani to annihilate the Coptic Patriarch, clergy, and others if resistance does not cease.

Mr. Baldwin admits 'bitter humiliation', to which I think we must add the national dishonour of deliberate breach of a treaty obligation. But the future is

what matters, and I venture to make two suggestions.

(1) We should absolutely decline to have anything to do with the French proposal, which I understand the Duchess of Atholl favours, to prepare by means of regional pacts machinery for the immediate application of military sanctions in the event of an aggression in any European area. In such a policy we should have no Dominion support, and in any case the Commons in this country will always have to approve military action extending beyond immediate defence against aggression on British territory.

(2) As we have ourselves broken engagements deliberately, we must cease our denunciations of Germany for like action and aim at a policy which will give reasonable satisfaction to German colonial ambitions. It was the view of Queen Victoria and Lord Salisbury, of King George V and Sir E. Grey, that legitimate opportunity of expansion for Germany in Africa was due. It is absurd of Mr. Ormsby-Gore, after capitulation at discretion to Italy, to treat as defeatism readiness to consider Germany's just colonial ambitions, and any politician who allows the return of the mandated territories to stand between us and an accord with Germany would be guilty of inflicting the gravest injury on his country. Further, the recognition by Austria of the Italian annexation of Ethiopia clearly justifies the conclusion that she waives any claim to protection under Article 10 of the League Covenant, and paves the way for British renunciation of any desire to prevent her merger in Germany.

28. THE JUSTIFICATION OF THE GERMAN CLAIM TO OVERSEA TERRITORIES

To the Editor of THE SCOTSMAN, *3 July 1936.*

The Foreign Affairs Committee of the House of Commons, composed of members of all parties supporting the National Government, is reported to have resolved that it would be the gravest error to allow Germany to suppose that the transfer of any mandated territory was even open to discussion. This is only one among many signs of the determination widely held to maintain from the Treaty of Versailles important territorial advantages for Britain, though the rest of the Treaty may be abandoned as impracticable and unjust.

The Government evidently sympathizes fundamentally with this attitude, and this fact doubtless explains its apparent willingness, to which you drew attention on July 2, to contemplate co-operation with France and Russia in a *bloc* against Germany. On the other hand, the Prime Minister has assured us that he seeks appeasement with Germany. But has such a declaration any meaning if he is not prepared to pay the price for such appeasement? Is this country to be compelled to bear the burden of indefinite rearmament, which presses hard on many classes of the people, and the danger of war because Britain, France, and Belgium are determined to retain the spoils of war and to maintain Germany in a position of perpetual inferiority?

It is useless to say that Germany would not be content with colonial expansion, and on that ground to refuse to negotiate. Germany is entitled to know what concessions will be made to her for the sake of securing her co-operation in European peace, and it was bad

policy in the tactless and clumsy questionnaire presented by Mr. Eden to omit all mention of her request for colonial territories. If and when fair offers are made to Germany, and she refuses or returns equivocal answers, she can fairly be denounced; but as matters stand we have the singularly unedifying spectacle of Britain, France, and Belgium, all possessed of enormous colonial areas, denying any consideration to German needs. Nor is the injustice lessened when we remember that, owing to the disloyalty of France and her refusal to surrender any useful territory to Italy, that Power was enabled, through M. Laval's action, to destroy Ethiopia without due intervention by the League.

I am well aware how unpopular it is even to suggest surrender of the mandated territories, but statesmen should place principles above popularity, and should make it clear to the public that, if they wish peace, they must be prepared to consider the needs of other Powers. The present effort in political circles to treat the German request as something preposterous, to be firmly resisted, is the negation of statesmanship, and grossly misleading to people in general.

29. BRITAIN'S RESPONSIBILITY FOR THE FAILURE OF SANCTIONS

To the Editor of OUTLOOK, *6 July 1936.*

My article on Sanctions in your last issue was written when there still existed a faint hope that the Cabinet, not then unanimous, would refuse to be guilty of the folly of repudiating the clear and categorical obligations of the United Kingdom under Articles 10 and 16 of the League Covenant. It is some consolation that the Union of South Africa through Mr. te Water

denounced effectively this betrayal, and very gratifying that New Zealand, contrary to expectation, also dissented. The Balkan and Little Ententes by their silence no doubt meant to indicate protest, but formal dissent would have been far wiser.

No legal excuse exists for the British failure. (1) The allegation that action under Article 16 must be collective flatly contradicts the terms of the Article, and is negatived by the history of the attempts to amend it which were all frustrated by the refusal of France to contemplate any relaxation of its absolute character. (2) The fact that the United States was not a member of the League was wholly irrelevant. It was present to the minds of those who proposed to weaken the terms of Article 16, but deliberately rejected as irrelevant. (3) The argument put forward by Sir A. Chamberlain that he knows of no authority in the Covenant for maintaining sanctions as a punishment is worthless, and its author at least cannot have been ignorant of his casuistry. The Covenant provides absolutely for the imposition of sanctions for the purpose of preserving the territorial integrity and independence of all members of the League, and Article 16 contemplates plainly not withdrawal of sanctions found inadequate, but their intensification and the use of armed force. To talk of continuing sanctions as punishment is therefore inexcusable and discreditable, for the phrase has been taken up by many laymen who naturally think that Sir A. Chamberlain would not resort to a wholly false and ridiculous contention.

If the excuse for failure is fear of an Italian attack on a country unprepared, as apparently is the view of the Duchess of Atholl, then it must be pointed out that deep censure rests with the Prime Minister, who has

thus been guilty of misleading the people into the belief that Britain was adequately prepared to fulfil any obligation incumbent under treaty. One can imagine what would have been said by Conservatives of a Labour Government which failed in the prime duty of a Government, and it is curious to contrast the mild treatment meted out to Mr. Baldwin.

If the real reason is, as appears from Mr. Baldwin's latest apologia in his message for the Derby election, the desire to keep Italy in the League of Nations, the ground is deplorable. What value attaches to a League which retains as a member a Power which in violation of the Covenant and several other treaties destroys by illegal means the independence of another member of the League? Does Mr. Baldwin not realize that the action of Britain and the other members of the League is utterly destructive of the whole basis of international law, the sanctity of treaties? Do the British people realize that by this deliberate breach of a solemn obligation freely adopted they have deprived themselves of the slightest moral right to complain of Germany's breach of treaty obligations, imposed by force of arms, and, it must be admitted, in doubtful harmony with the terms announced by President Wilson? The insults addressed to the High Commissioner of the League and the League Council by the President of the Danzig Senate are the just retribution for an unparalleled breach of national faith.

The attitude of the Conservative Party is conclusive of the immediate object of British rearmament, apart from the advantages to the armament and allied industries and the workers therein. Their aim is to form an alliance with France and Belgium, with Italian backing, to maintain against Germany the prohibition

to secure union with Austria and the exclusion from oversea possessions. Appeasement with Germany is professed by Mr. Baldwin and M. Blum to be their object, but will either accept the plain duty of agreeing as part of any new plan for appeasement to permit German overseas expansion, which was admitted to be just by men so different as Lord Salisbury and Sir E. Grey? Or will they insist on keeping the spoils of war, and forcing Germany to revert to Herr Hitler's earlier ideal of expansion eastwards?

It is almost incredible that the Foreign Affairs Committee of the supporters in the House of Commons of the National Government should have demanded that Germany should be warned that the issue of the return of her former possessions cannot even be discussed. It is a pleasant reflection that Scotland may suffer the horrors of aerial attack for the sake of maintaining the interests of a few thousand immigrants into the Cameroons, Togoland, and Tanganyika. The present trend of British foreign policy seems indeed to be anxious to furnish sound grounds for demanding for Scotland Dominion status.

30. THE PROJECT OF AN ANTI-GERMAN PACT

7 July 1936.

Little by little the proceedings at Geneva and elsewhere have revealed the grounds which have motived the remarkable course of British policy in the matter of Ethiopia. The Government spokesmen have naturally been far from explicit in their declarations, but Lord Cranborne, who was sent to Edinburgh to enlighten the doubting minds of Scottish Unionists, betrayed the tendency of British policy by his insistence

that the question of Germany was as serious as that of the failure of the League. Moreover, the trend of ministerial opinion is sufficiently shown by the indiscreet effusiveness of Mr. Duff Cooper in regard to British relations with France. It is a strong sign of the anarchy which Mr. Baldwin is permitting to dominate his Cabinet that at a most critical moment, when the Prime Minister was asserting his eagerness for friendship with Germany, the War Minister should have been assuring France that the Rhine was the British frontier, and that France and Britain must stand together to combat the dangers to both countries induced by the spread of Nazi ideals. The discussions of this utterance in the House of Commons and the House of Lords are held by the Government to have proved that Mr. Duff Cooper spoke in the same sense as the Prime Minister and that there is no breach of solidarity in the Cabinet. But this official complacency does not serve to disguise essential facts. The attitude of the Secretary of State for War was wholly inconsistent with the idea of real anxiety to secure friendship with Germany, and implied the belief that in effect alliance with France was necessary for British as well as French security. That is clearly the implication of the address, that is the sense in which it was naturally understood in France, and, it must be added, the whole trend of governmental policy supports this interpretation of the position.

Further light on the situation can be gathered from the lines of French policy as laid down at Geneva by M. Blum. His whole argument there was based on the necessity of collective security and of strengthening the League Covenant. With admirable candour at the expense of M. Laval's Government, he admitted that

the League had failed in the case of Ethiopia because the terms of the Covenant had not been applied or had been applied with hesitation and not fully. France was certainly in favour of a reform in the Covenant, but it must be in a direction that would make the Covenant of the League more efficacious. The views of M. Litvinoff were in precisely the same sense. He expressed the strongest objection to the weakening of the League Covenant, demanded that Article 16 must remain untouched, and insisted that economic sanctions must remain obligatory for all members of the League. In the ideal League military sanctions as well ought to be binding on all, and at any rate provision must be made that every continent should be covered with a network of regional pacts, in virtue of which individual groups of states would undertake to defend particular regions from an aggressor. The meaning of the position of MM. Blum and Litvinoff is unmistakable. They both dread German aggression, and they desire to secure British participation in a regional pact directed against the possibility of such aggression.

The British attitude to the position is not wholly different, if it may be judged from the attitude of Mr. Eden at Geneva. He also seemed to contemplate the maintenance of the doctrine of collective security despite the abandonment of Ethiopia. What, it must be asked, is the effect of the attitude of the three Powers, or at any rate unequivocally of France and Russia? In brief the whole matter reduces itself to the determination of these Powers with the aid of Britain to maintain themselves against Germany. Britain in fact is asked, under the guise of League security, to enter into a definite alliance with France and Russia against Germany. If the proposal were to create collective

security for all League members, and if all the members of the League were to be required to pledge themselves unequivocally to act on Article 16 in any future case of aggression, the proposal might at least be worth serious consideration. But the regional character of the security proposed shows the hollowness of the whole project. Britain is to be induced to become a partner in a limited system without receiving any return in the form of an assurance of collective assistance in the event of an attack on Australia or New Zealand or India.

What sufficient motive can exist to induce Britain thus to pledge herself to follow the fortunes of France and Russia? The worthlessness of solemn pledges from France was exposed by the Emperor of Ethiopia when he pointed to the secret treaty between M. Laval and Signor Mussolini as the *fons et origo* of the total failure of the League to keep faith. French policy is and has always been dictated by considerations of expediency, and for Britain to be tied by any binding alliance to France would be indeed unwise. Still less attractive is the proposed undertaking of responsibility for the maintenance of the frontiers of Russia, and even less appealing is the further suggestion that responsibility should extend to the maintenance of the sovereignty and integrity of Austria. It is wholly impossible to see any sufficient ground for Britain undertaking to secure Italian interests by intervening against German projects of union with Austria.[1] The motive therefore that alone can be adduced to support such a line of British policy as is now contemplated is Imperial interest in the preservation under British control of the former German territories.

[1] The German-Austrian accord since reached points the way to the inevitable ultimate union and negatives for good British action.

This clearly is a matter requiring most serious consideration, and to deal with it on grounds of sentiment only is extremely foolish. Unfortunately it is on these grounds that it has been handled by the General Council of the Union of Conservatives' and Unionists' Associations and by the Foreign Affairs Committee of members of those parties which support the National Government. In both cases resolutions have been adopted demanding that no discussion of this issue should be permitted. The seriousness of this fact is that no effort seems to have been made on the part of the Ministry to deter the passing of these resolutions, so that the impression naturally gains ground that the Ministry is not adverse to having pressure put upon it in this sense. If, indeed, this is not the case, then it must be said that its tactics are unwise, for it certainly is encouraging the impression that the surrender of mandated territory is ruled out of the region of possibility.

If this be the case, then very grave doubts as to the wisdom of the British attitude are inevitable. It seems clear that the British interest lies in the conclusion of a general pacification on the Continent, and in that Germany must play a decisive part. Now the aims of Germany are essentially based on the doctrine of equality of rights, as they were before the war, when the policy of the United Kingdom was with some degree of success directed towards assuring Germany such a place in the sun as would induce her to remain a contented member of the European community. Germany has looked from time to time in two different directions for the power of expansion, to eastern Europe, and to oversea territories; and Herr Hitler was long the protagonist of the former ideal, which involves conflict in Europe. It is only recently that he has been induced

to consider the alternative of oversea expansion, and it may well be that he personally would not be sorry to be able to revert to his former project on the score that British and French intransigence closed the way to development overseas. The course obviously proper for Britain and France alike is to offer Germany the opportunity of resuming her colonial activities in the territories formerly under German control. Belgium in the same way should be ready to restore her share of German East African territory. The response of Germany to such overtures would be decisive as to her good faith. At present she is entitled to treat the Powers as determined to maintain against her the sacrifices exacted by the treaty of peace and to regard her as a vanquished and permanently inferior Power.

It is impossible seriously to contend that there are any British interests involved in the retention of Tanganyika, Togoland, or the Cameroons sufficient to justify the maintenance of hostility with Germany. The acceptance by that Power of the normal mandate terms would secure that no native armies should be raised; nor is it a valid objection that Germany might not keep the terms laid down, for on that basis all negotiation with Germany would be valueless, and the British Government accepts the German naval agreement as effective and valuable. It is contended in some quarters that British readiness for concessions might embarrass the Dominions. But the Union of South Africa can very probably obtain a compromise with Germany as to the future of South-West Africa; Germany doubtless does not want Samoa; and New Guinea is not of vital importance to Australia. In any case, Britain cannot bind the Dominions, and her exposure to air attacks renders it incumbent on her Government

to spare no effort to secure an abiding peace in Europe, which can never rest on the permanent suppression of so great a Power as is Germany.

31. THE MANDATED TERRITORIES

To the Editor of THE SCOTSMAN, *11 July 1936.*

Mr. J. de Rothschild must suffer from an unfortunate sense of humour, or he would not have chosen as a suitable moment for a protest against the return to Germany of her former African territories a debate which was to reveal the British Government in the determination to discriminate definitely against the natives of Kenya in their own land, and that on a purely racial ground. The natives, who are natural-born British subjects, and British Indians, are to be excluded in perpetuity from 12,000 square miles of land set aside for Europeans—Italians, Greeks, Portuguese, &c., apparently included. As Lord Lugard has stressed, natives whose rights are undoubted are to be excluded and compulsorily evicted for the benefit of a racial minority—action hitherto unknown under the direct rule of the Crown.

Mr. de Rothschild must also have forgotten the source whence Herr Hitler derived his doctrine of the perpetual inferiority of the native races. It is the traditional policy of South Africa, just carried to fruition by the destruction by the almost unanimous vote of Parliament of the Cape native franchise; and I gather from Earl Winterton that any attempt to diminish the racial preference in Kenya would be effectively forbidden by the Union.

The question is not one of buying off some foreign Power which threatens the peace of Europe, but of re-

considering the terms of a treaty of peace which was imposed by force of arms and with doubtful justice. The exclusion of Germany from Africa runs counter to the policy of Mr. Joseph Chamberlain, who long struggled to secure German friendship. The assertion that Germany is unfit to govern natives is incapable of proof. The Belgian régime in the Congo once raised the bitterest denunciations, but under the late King the evils of the former régime were reformed. If Germany would agree to maintain the mandatory system, there is no reason to suppose that the natives would be in an unsatisfactory position. Thanks to that system, they have fared better in Tanganyika than in British Kenya, for racialism has been forbidden.

The alternative to the reconciliation of Germany by just regard to her claims may be seen in defence estimates of £188,163,700, and French and Turkish delight at the presence for the first time of a large British delegation at the manœuvres of the Soviet Army and Air Force; while France hastily terminates the Mediterranean accord, so that Italy may be added to the group of Powers determined to keep Germany in due subjection, and the League Assembly is induced by the Great Powers to avoid any pronouncement which will prevent them recognizing the annexation of Ethiopia at an early date. All the efforts of the British Government seem now to be devoted to preparation for war at a time when we have every right to demand that they should be engaged in working out just terms to bring back Germany to friendly relations with Europe rather than in devising schemes to preserve the spoils of war.

32. THE CABINET'S INDECISION AS TO THE TRANSFER OF MANDATES

To the Editor of THE SCOTSMAN, *28 July 1936.*

May I comment on the grave legal, moral, and political difficulties which have prevented the Cabinet coming to any decision on the transfer of the mandated territories?

1. It is clearly absurd to talk of legal difficulties. It is perfectly clear that agreement between Britain and Germany for transfer of the mandates approved by the League Council would be completely effective internationally, and parliamentary approval would be constitutionally decisive.

2. The political difficulties are real, but they can be exaggerated. Britain can act without simultaneous action by France, Belgium, or the Dominions. It is absurd for Sir Austen Chamberlain to ask if Britain can act in the face of the protest of the Union of South Africa, apart from the grave doubt whether the Union Government has actually taken upon itself the responsibility of protest; Mr. Eden categorically denies any consultation, as did Mr. Baldwin recently. The Union asserts the right of neutrality and secession without agreement, and for the Union Government to protest against any step calculated to secure these islands from German attack in these circumstances would be preposterous. No one suggests that any authority but the Union can transfer South-West Africa, and Britain claims no right to advise the Union to make such transfer. Britain, of course, would only transfer as part of a plan intended to assure peace in Europe, and if France and Belgium frustrated such a consummation as approved itself to

British opinion by refusing to transfer their mandates, they could not look for British support. Nothing can be more unwise than to make France or Belgium believe that whatever policy they adopt they are assured of British backing. No vital British interest is involved in France's possession of the Cameroons or Togoland, or the Belgian tenure of Ruanda and Urundi.

3. It is curious that a Government which has been guilty of the violation of its obligations under Articles 10 and 16 of the League Covenant should distress itself on the head of moral obligation; but the consideration naturally weighs heavily with those of us who regard as deplorable the suggestion of Sir Austen Chamberlain that we should commit the absolutely illegal action of following Germany and Austria in recognizing the Italian conquest. But there are several moral considerations to be weighed. (1) The pre-war British Governments accepted as just the claim of Germany to oversea possessions; Conservative and Liberal statesmen were agreed with our Sovereigns on this head, and popular opinion was favourable; Mr. Chamberlain was long eager to found a British-German entente. (2) The British Government took the lead in abolishing sanctions against Italy, and thereby definitely presented Italy with the opportunity of consolidating her East African Empire. Is it tolerable that Germany should be excluded from Africa under these circumstances? (3) Sir Austen Chamberlain's references to the system of German government are clearly irrelevant. The German Government represents the deliberate will of the German people, who are evidently, like the Italian people, conscious that they cannot cope with the obligations of democratic government. The demerits of Italian government did not deter Sir Austen

from urging recognition of the most flagrant aggression and conquest, and it is palpably immoral to apply different standards of judgement. (4) What is relevant is the question whether Germany can be trusted to govern the mandated territories reasonably well. The answer is that, if she accepts the conditions of the mandate, and gives effect to them, her government should be at least as satisfactory as that of France or Belgium or of the Union of South Africa. Our action in Kenya unfortunately shows only too painfully how much we ourselves fall below our theoretical standards when European settlers claim preference over natives, and prevents our undue exaltation of our own position over that of other Powers. What we are bound to do is to make certain that transfer is subjected to conditions of security for natives which can effectively be enforced.

4. It is, of course, useless to pretend that we can offer Germany anything short of transfer with which we can morally expect her to be satisfied. Possession of a mandate confers not merely prestige, but control of administration and patronage, of currency, and in practice of allocation to nationals of contracts and concessions. It is idle to insist on the comparative worthlessness of mandates, and only gives us a reputation for hypocrisy. To say that she will not be satisfied is true, but in 1913–14 we contemplated her acquisition peacefully of part of Portuguese Africa. But the essential point is that we have before us the task of trying to arrange for peace in Europe, which means Germany laying aside her designs in the East. If by transfer of the mandates we can contribute to this result, it would be immoral to refuse to do so; and to refuse, as Sir Austen Chamberlain and others wish, even to discuss the matter, would be an assertion that Britain insisted

on keeping her war gains at any cost. If we wish peace, we shall have to pay the price.

33. EUROPEAN APPEASEMENT AND THE TRANSFER OF MANDATES

To the Editor of THE SCOTSMAN, *3 August 1936.*

It is deplorable that any member of Parliament should be so completely ignorant of history as to assert that Germany alone was responsible for the Great War. The slightest intelligent consideration even of the British published documents alone would have shown Mr. Williams that the immediate responsibility for the war rested on Austria, and that the ultimate cause was the division of Europe into the rival *blocs*, France and Russia with ententes with Britain, and Germany and Austria, with Italy ready to betray her allies if she could obtain her price. We are now menaced with the repetition of this danger, and to avoid the disaster of a new war I hold that the British Government should be prepared, if it can thus secure an effective appeasement in Europe, to transfer the mandates to Germany. I note without surprise that the *Hamburger Fremdenblatt*, in harmony with German opinion, is eager to restrict the discussions of the Locarno Powers to a Western Pact, thus leaving Germany free for expansion in the East. That policy means ultimately war in Europe from which, owing to our interest in the independence of France, we could not hold aloof. If we could prevent that by sacrifice of the mandated territories, such action would be well worth while. Those who refuse even discussion are encouraging Herr Hitler to concentrate on his own preference for expansion in the East, and at the cost of France.

Germans have never admitted the truth of the attacks on their conduct in South-West Africa made in the *ex parte* Report of 1918,[1] and they retort on the Union Government by insistence on the bombing of the Bondelzwarts by its orders despite its duties under the mandate. But the Belgian[2] and the French Congo were once scenes of disgraceful misgovernment, and we cannot honestly say that Germany is unfit to hold mandates. What I have urged is that, if any transfer is made, it should be under conditions calculated to secure the maintenance of the régime established in Tanganyika, the Cameroons, and Togoland.

Attacks on the deliberate policy of the German people as regards their own Government are plainly irrelevant, and merely calculated to embitter feeling between the two countries. For an admirable illustration of the doctrine of the wisdom of conciliation of former foes I would refer Mr. Williams to the action of the Government which he supports in making what is virtually a loan to the Russian Government even at the risk of being accused, with some reason, of a definite breach of faith.[3] If we can purchase peace in our time, the mandated territories would be a small price, nor would we surrender them for anything less.

[1] Parl. Paper, Cd. 9146.

[2] See Keith, *The Belgian Congo and the Berlin Act* (1919), which, written for the Foreign Office in view of the possibility of amending the Berlin Act (partially effected in the Treaty of St. Germain, 1919), accepts only conclusive official evidence.

[3] See protest of the Association of British Creditors of Russia, July 31, 1926, stressing pledges that no loans would be granted to the Russian Government until claims had been settled, and the fact that the £10,000,000 credit arranged by Mr. Runciman was in effect a five-years loan.

34. DOMINION CONTROL OF BRITISH FOREIGN POLICY

To the Editor of THE SPECTATOR, *14 August 1936.*

Mr. O. Pirow, Minister of Defence of the Union, who startled British opinion last year by his warm endorsement of the return to Africa of Germany as a colonizing power, has now declared that 'in no circumstances can South Africa or Great Britain envisage the return of either Tanganyika or South-West Africa to Germany'.

May I suggest that there are serious objections to the latest form of the new Imperialism? No one in this country, I imagine, would presume to make any declaration regarding the policy of the Union of South Africa with regard to the return of South-West Africa to German control, though clearly it was unfortunate that Mr. Pirow expressed himself in favour of Germany receiving territory in Africa, when he meant that this was to be accomplished at the expense of some other Government. But it rests with the British Government alone to make pronouncements on British policy as regards Tanganyika. The Union is entitled under the Imperial Constitution to express freely to the British Government its views on the subject, and it is obvious that that Government will accord the fullest consideration to any Union representations. But the Union must concede to Britain the same sovereignty which she claims, and must allow Britain to decide her policy on deliberate consideration of British interests. If Mr. Pirow means to suggest that the Union can veto British action, his position is untenable, for like his leader he is a convinced and eloquent exponent of the view that the Union possesses an independent

sovereignty which enables her to assert neutrality in a British war and to secede at will from the Commonwealth, in accordance with the powers taken in the Status of the Union and the Royal Executive Functions and Seals Acts of 1934. Britain is perfectly capable of defending her African colonies, and, so far as the natives and officials are concerned, neither in East nor in West Africa is there likely to be any enthusiasm for the Union to act as 'elder brother'.[1]

35. THE DOMINIONS AND THE EGYPTIAN ALLIANCE

To the Editor of THE SCOTSMAN, *29 August 1936.*

(1) As I anticipated, the text of the Egyptian Treaty shows that it has proved impossible to associate the Dominions or India with Britain in the alliance which will henceforth regulate our relations with that country. The result is that, as in the Locarno Pact, we have a convention imposing on Britain an obligation to go to war which is not shared by these territories. It is true that a like provision exists as regards Iraq, but the position in that respect is immensely different. Australia, New Zealand, and India have all a vital interest in the

[1] Resentment at the Union's apparent intention to claim control of British Africa south of the Sahara has led to the formation of a league in Southern Rhodesia to resist incorporation. General Smuts at the African Transport Conference on September 7 sought to remove anxiety by assurance that the Union would only act on request: but how far this applies to Basutoland, the Bechuanaland Protectorate, and Swaziland is not clear. In any case the insistence at the Government banquet in toasting the King separately as King of South Africa, which led to Col. Stallard walking out in protest, is a significant reminder that the Crown in the Union has no organic connexion with the British Crown. To transfer Northern Rhodesia or any other British territory to the Union seems therefore indefensible except at the express request of the natives.

security of Egypt, and the question arises why they should not have been given the opportunity of becoming parties to the accord. There is no real comparison between this and a Western pact for European security.

(2) The abolition of the capitulatory régime will, of course, bind the Dominions and India, for its advantages are enjoyed solely through the British Government.[1] To reserve jurisdiction in matters of status would hardly be worth while, because English law adopts domicile, not nationality, as the basis of status, and there is no reason whatever to deny the competence of the Mixed Courts to deal with the issue.

(3) It is important to note that the Egyptian Courts, including for the present the Mixed Courts, are to have no authority to annul laws asserted to contravene the assurances of non-discrimination in legislation and taxation given by the Treaty. This forms a striking contrast with the labyrinth of clauses provided against discrimination in the Government of India Act, 1935, but is unquestionably wise.

(4) The vital element in the concessions made by Britain regarding the Sudan is to be found in the new arrangements regarding the application of conventions to that territory, which concede to Egypt a definite share in the actual exercise of sovereignty, for her consent now becomes a matter entirely within her discretion. If the possibility of the termination in favour of Britain of the condominium is thus ruled out, the other clauses assure Britain full security in the development of the country. The agreement that the primary aim of the administration must be the welfare of the

[1] As in the case of Albania; see Keith, *Constitutional Law of the British Dominions*, p. 398.

Sudanese is a doctrine of unimpeachable validity, which, unhappily, has been seriously neglected in the recent history of Kenya.

(5) A glance at the signatories of the Treaty reveals the happy result of the withdrawal of Sir S. Hoare's effort to forbid the restoration of democracy in Egypt.[1] We have at last a compact freely negotiated by plenipotentiaries representing all that is best in the political life of Egypt, which places our relations on an honourable and lasting basis. The late King of Egypt was never prepared or able to conclude so wise a pact.

36. THE INTERNATIONAL SITUATION

To the Editor of THE SCOTSMAN, *11 September 1936.*

1. How completely our repudiation of our obligations under the League Covenant has destroyed respect for international law can be seen in the report that the Emperor of Ethiopia is to be quietly urged not to send a representative to the League Assembly, thereby virtually confessing the destruction of his sovereignty. In return Italy will not insist on the execution of the paragraph which states that members of the League must be 'fully self-governing States, Dominions, or colonies', and Signor Mussolini will not press his demand that Ethiopia should be expelled from the League. It must be pointed out that there is no paragraph in the Covenant under which the expulsion of Ethiopia could be legally proposed, or the credentials of its delegates called in question. Italy herself, of course, has grossly violated the League Covenant and has merited expulsion, but no power exists under the Covenant to affect the membership of Ethiopia, and

[1] See i, no. 34, *ante*.

every member of the League remains under Article 10 bound to respect and preserve against Italian aggression the independence of Ethiopia. If Ethiopia is to be eliminated, then the Covenant must be amended by the procedure therein provided. It will be interesting to note if Mr. Eden will again give the members leadership in the desertion of Ethiopia. For the Emperor to renounce his country's rights would be absurd. There is nothing permanent in international relations: we have seen Poland, Czechoslovakia, and the Irish Free State become independent nations, and at a future date Ethiopian sovereignty in some measure may be revived.

2. The correspondence published in France reveals Portugal as flaunting international law with as much effrontery as Italy. We have, together with France, induced Russia, Poland, Turkey, Rumania, and Yugoslavia to prevent the legitimate Government of Spain obtaining arms in order to protect itself against a military revolt based on the use of Moorish troops. But we have done nothing whatever to bring Portugal to respect her duty to afford no assistance to insurgents, and it is now admitted that Portugal reserves full freedom of action if subscriptions to aid the Spanish Government are not barred. As the British Government has no power to bar such subscriptions,[1] Portugal remains free to aid the rebels. We are entitled to know

[1] Even if Britain recognized the rebels as belligerents and issued a proclamation of neutrality, no power would exist to prevent the raising of collections to provide medical aid and food for the Government forces and the people. The law could not be strained as it was in the case of sanctions (pp. 146, 147, *ante*), and legislation would be essential. In Melbourne, on September 15, the workers similarly asserted the right to make collections. The raising of an Irish Legion to aid the rebels by General O'Duffy is illegal, and persons of Irish nationality can still be punished as British subjects under the Foreign Enlistment Act, 1870.

if Mr. Eden has made it clear to the Portuguese Government that their disregard for international law disentitles them in future to claim the advantage of the British alliance. So far the efforts of France and Britain seem merely to have secured marked advantages for the insurgents, and to be playing into the hands of Germany and Italy. Yet M. Blum at least recognizes, if Mr. Baldwin does not, that a Fascist Spain would be a grave danger for France in the Mediterranean. One would have hoped that the unbridled denunciation of British action in Malta,[1] encouraged by the Italian Government, would have opened British eyes to the catastrophe of the passing of Spain under Italian control. Is it seriously believed that Gibraltar in such circumstances would be tenable? Is it not an elementary principle that our interests demand that Spain should be independent and friendly? Does any one now believe that we had no interest in the fate of Ethiopia?

3. No one, I suppose, with any sense of reality disputes the truth of Mr. te Water's warning at Geneva, that 'it is idle to suppose that by a process of reconstruction the League can survive as an instrument of world influence and peace'. The violation of the Covenant reduces for a long time to come at least the possibility of reliance on League obligations. In these circumstances have we any positive policy[2] for our

[1] The final abrogation of the Maltese Constitution under the Malta (Letters Patent) Act, 1936, on September 2, and the abolition of the official position of the Italian language were rendered necessary by the marked disloyalty of Italian elements in the population during the Mediterranean crisis.

[2] The alternative policy of isolation urged by Lord Beaverbrook from a colonial standpoint is possible for Canada, thanks to the Monroe doctrine, but not for an Imperial Power, save as a merely temporary makeshift. Acceptance of any regional pact which leaves Germany a free

own security or that of Europe? To propitiate Italy is hopeless, as those who urged conciliation on trade grounds speedily found, to their just dismay. Are we to refuse to consider Herr Hitler's demand for return of the German colonies if we can secure in return pacification and reduction in armaments? Refusal, of course, is urged by the vast interests of capital and labour alike deriving profit from armaments; it is supported on humanitarian grounds by many who have not a word to say on our misgovernment in Kenya and Nyasaland, and by our natural tendency to dislike surrendering any conquests. But in the long run are we prepared to risk war for the sake of Tanganyika? I fear that we are simply doing what we have so often censured in the French: we are declining to make terms when we can do so to the advantage of Europe, and we shall end by surrendering the territories without securing either safeguards for the natives or any contribution to pacification. But at least might we not stop pretending that the colonies to which we cling with such desperation would be worthless to others? No one believes us, and I doubt if we believe ourselves.

37. BRITISH POLICY AT GENEVA

28 September 1936

It is deeply to be regretted that Mr. Eden should have taken part in the effort to invalidate the credentials of the Ethiopian delegates at Geneva. Legal interpretation plainly forbids rejection of the credentials given by the head of a State whose territory has been overrun by the forces of a member of the League. The

hand to expand in Russia would be fatal to the Empire in India and Australasia. See ii, no. 26, *ante*.

other members are bound under Article 10 of the Covenant to preserve the territorial integrity of Ethiopia. They cannot make their deliberate breach of their duty an excuse for excluding the Emperor's delegates. To regularize the position the only legal method open is amendment of the League Covenant. New Zealand, happily, declined to be party to M. Avenol's deplorable intrigue.

The suggestions of Mr. Eden for League reform point to the decision to perpetuate the Locarno policy, despite the fact that it involves exclusion of the Dominions from sharing in British obligations, and may compel Canada to join the Union of South Africa and the Irish Free State in the assertion of the right of neutrality, and its inevitable sequel, secession. On the other hand the stress laid on treaty revision negatives the possibility of ruling out the question of transfer of mandates, for which Herr Hitler has now put forward a definite though not immediate claim. The position of the Union Government thus becomes decidedly delicate.

It must be added that, if the Covenant is separated as suggested from the treaties of peace, it will be increasingly difficult to defend British policy in Palestine, for it is undeniable that effect has not been given to the obligation of training the inhabitants to stand alone under Article 22, and our breach of obligation contrasts painfully with the treatment of Iraq, Transjordan, Syria, and the Lebanon. To drive the Arabs to revolt for lack of redress, and to crush that revolt under martial law, is painfully reminiscent of the British policy to Ireland from 1916 to 1921, rather than of the carrying out of 'a sacred trust'. It may still be hoped that tardy justice may be done. Britain's position in the Mediterranean is sufficiently undermined

by Italy and by the aid given by Germany and Italy to the Spanish rebels to render it most undesirable that she should permanently alienate Arab goodwill. Nothing can indicate more clearly the decline of respect for international law than the impotence of the League to afford aid to the Spanish Government, and the dispatch during its session of congratulations to the rebels from Herr Hitler's deputy.[1]

[1] The calling off by the Arab Higher Committee of the strike in Palestine on October 11 was simultaneous with the announcement of the decision of Italy to increase her naval personnel to 60,000, and the adduction of proof to the Labour Party Conference of the ruin of the governmental cause in Spain. The menace to Britain in the Mediterranean and the failure of British foreign policy must cause deep anxiety. Armaments without men are futile, and Labour negatives conscription; while the budget is unbalanced and no steps are taken to safeguard national resources for a crisis by proper control of the profits of firms engaged on rearmament work.

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